IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960.

No. .....

RISS AND COMPANY, INC., a Corporation, and TRANSPORT MANUFACTURING & EQUIPMENT COMPANY, a Corporation,
Appellants,

vs.

STATE OF MISSOURI ex inf. JOHN M. DALTON, Attorney General,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI.

JURISDICTIONAL STATEMENT.

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the Supreme Court of the State of Missouri, entered on April 11, 1960, ordering the issuance of Writs of Ouster as to each Appellant subject to being stayed upon payment of fines aggregating $100,000.00 and costs and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW.

The principal opinion of the Supreme Court of Missouri and its opinion on Appellants' Motion for Rehearing are reported in 335 S.W.2d 118. The Report of the Special Commissioner appointed by the Supreme Court of Missouri in this proceeding to hear the evidence and report his findings of fact and conclusions of law is unreported. Copies of the opinion of the Supreme Court of Missouri and the Report of the Special Commissioner are attached hereto as Appendix A and B respectively.

JURISDICTION.

This proceeding was commenced by the Attorney General of the State of Missouri by the filing of an Information in the Nature of Quo Warranto in the Supreme Court of Missouri under its original jurisdiction in such matters. The Information prayed the ouster of appellants from further exercise of the corporate franchises granted to them as foreign corporations by the State of Missouri on the grounds that appellants, pursuant to a common plan, had abused their franchises by violations of the state's motor vehicle registration laws and violations of certain other statutes not now material. The matter was referred by the Court to a Special Commissioner for the hearing of evidence and thereafter upon the filing of his Report by the Special Commissioner, the Supreme Court of Missouri entered its judgment on April 11, 1960. Appellants filed their Motion for Rehearing which was denied May 9, 1960. Thereafter, appellants timely filed their Notice of Appeal in that Court on July 9, 1960. The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by Title 28, United States Code, Sec-

tions 1257(2) and 2101 (c). The following decisions sustain the jurisdiction of the Supreme Court of the United States to review the judgment on direct appeal in this case: *Western Union Telegraph Company* v. *State of Kansas ex rel. Coleman*, 216 U.S. 1; *Pullman Co.* v. *State of Kansas ex rel. Coleman*, 216 U.S. 56; *American Smelting & Refining Co.* v. *Colorado ex rel. Lindsley*, 204 U.S. 103.

QUESTIONS PRESENTED.

Whether the Missouri Motor Vehicle Licensing and Registration Laws as construed and applied to Appellants by the Supreme Court of Missouri as the basis for its judgment of ouster are:

(1) Violative of Sections 8 and 10 of Article I of the Constitution of the United States as unreasonably burdening appellants' conduct of interstate transportation of property by motor carrier in requiring the payment of substantial registration fees for each vehicle operated in such interstate commerce at any time within the State of Missouri which fees, together with other charges exacted, far exceed a reasonable charge for fair compensation to the state for highway use in such interstate commerce, and have no relationship whatsoever to such highway use.

(2) Violative of Section 1 of the 14th Amendment to the Constitution of the United States by imposing a non-uniform and discriminatory tax upon the appellants' conduct of interstate transportation of property by motor carrier not imposed upon similar intrastate transportation in that such laws require the payment of multiple fees by interstate carriers on each vehicle used in the state in interstate commerce and a single fee on each vehicle used in intrastate commerce and where the practical effect of

such laws is to exact a greater charge for highway use from interstate carriers than is charged intrastate carriers.

(3) Violative, in their reciprocity provisions, of Section 1 of the 14th Amendment of the Constitution of the United States in imposing a tax asserted to be assessed for the privilege of using Missouri highways upon some but not all foreign incorporated interstate motor carriers of property using the highways of Missouri where imposition or exemption from the tax is determined not by reference to any actual or potential use of Missouri highways in interstate commerce nor to any intrinsic attribute of such carriers as a class, nor to any other real and substantial difference between those taxed and those not taxed; but where the determination of tax liability or exemption is based solely upon the circumstance of the state of incorporation of such carriers.

STATUTES INVOLVED.

Secs. 301.020 and 301.270, Revised Statutes of Missouri (1949), and Secs. 301.060, 301.070(4) and 301.120, Revised Statutes of Missouri (1949), as Amended 1951, are set forth, in pertinent part, in Appendix C hereto.

STATEMENT.

Appellant Riss and Company, Inc. (hereinafter called Riss) is a Colorado corporation. Appellant Transport Manufacturing & Equipment Company (hereinafter called T.M.&E.) was at the times material hereto an Illinois corporation. Both are authorized to transact business in the State of Missouri as foreign corporations. Riss is a common carrier by motor vehicle operating under authority of the Interstate Commerce Commission over approxi-

mately 36,000 miles of highways in 22 states. T.M.&E. leases to Riss the equipment and properties used by Riss in the conduct of its business as a common carrier. Both corporations maintain their general offices in Missouri and the main overhaul base for the fleet of trucks operated by Riss is located in Missouri.

At the times material hereto Riss was operating approximately 495 over-the-road tractors and 1300 trailers on its network of interstate routes. The tractors were registered and licensed in various states in the Riss system, including Missouri, but Missouri officials demanded that *all* of the vehicles which at any time traversed the highways of Missouri must be fully licensed in Missouri. By "fully licensed", it is meant that not only was it demanded that the tractor or trailer be licensed by the Missouri Public Service Commission, but that both the tractor and trailer be also registered with and licensed by the Missouri Director of Revenue. The annual fee for this latter registration and licensing alone was $600.00 for each tractor. Many of the tractors used the highways of Missouri but once or twice a year on trips to the main overhaul base in Kansas City, Missouri. At the time of such demands by Missouri officials, other states in which the vehicles were operated were insisting that a part of the Riss fleet be also licensed in their states. Officers and counsel of Riss and T.M.&E. conducted extensive negotiations with Missouri officials in an effort to resolve the problem on an equitable basis which would provide fair compensation to the State of Missouri for the use of its highways yet avoid the crippling impact of annual Missouri registration fees on the tractors alone approximating a third of a million dollars.[1] Riss and T.M.&E. urged a

1. Such registration fees were only a part of the charges imposed for use of the state highways. For example, in 1955

construction of the Missouri motor vehicle registration statutes under which such an equitable result would follow. They were, in fact, seeking a declaratory judgment supporting the construction they urged when the Attorney General of Missouri instituted this proceeding by the filing of an Information in the Nature of Quo Warranto in the Supreme Court of Missouri under its original jurisdiction in such matters. The judgment of ouster which was ultimately entered by that court was based solely upon violations of the state motor vehicle registration statutes.

Appellants, by their Answer and Amended Answer to the Information and throughout the proceeding, alleged that the construction of the motor vehicle registration statutes contended for by the Attorney General to support his claim of violations was repugnant to the Federal Constitution. The statutes were nevertheless construed by the court as urged by the Attorney General and on the basis of violations of those statutes, as so construed, the judgment of ouster was entered.

Appellants will not here detail the manner in which they raised the Constitutional issues in view of the language of the Missouri Supreme Court in its opinion (See App. A, pp. A28-A29).[2] That language makes it plain that the construction of the Missouri motor vehicle registration statutes ultimately adopted was drawn in question by appellants as violative of the Federal Constitution un-

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appellants paid to Missouri trailer registration fees, Public Service Commission fees and fuel taxes totaling approximately $55,300.00.

2. See: *Charleston Federal Savings & Loan Ass'n* v. *Alderson*, 324 U.S. 182, 185-6, where it was said that no inquiry need be made "how and when the question or the validity of the statute was raised when such question appears to have been actually considered and decided by that [state] court."

der both the commerce and equal protection clauses; that the Missouri Supreme Court considered the Constitutional issues thus raised; and that the decision of the state court was in favor of the validity of the statutes under the challenged construction. Accordingly, this Court has jurisdiction to pass upon these claims.

THE QUESTIONS ARE SUBSTANTIAL.

I.

Burden on Interstate Commerce.

This Court has on several prior occasions had before it cases involving local taxation of motor carriers operating in interstate commerce.[3] Appellants frankly concede that on the face of the record of such decisions, there would appear to be no warrant for the Court to again consider the problem. Such is not the fact, however.

The growth of interstate motor carrier transportation coupled with increased efforts of the states to bolster tax revenues in recent years has given rise to a new factual background for the old questions. Language used by this

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3. *Hendrick* v. *Maryland*, 235 U.S. 610 (1915); *Kane* v. *New Jersey*, 242 U.S. 160 (1916); *Clark* v. *Poor*, 274 U.S. 554 (1927); *Interstate Busses Corporation* v. *Blodgett*, 276 U.S. 245 (1928); *Sprout* v. *South Bend*, 277 U.S. 163 (1928); *Interstate Transit* v. *Lindsey*, 283 U.S. 183 (1931); *Continental Baking Co.* v. *Woodring*, 286 U.S. 352 (1932); *Hicklin* v. *Coney*, 290 U.S. 169 (1933); *Aero Mayflower Transit Co.* v. *Georgia Public Service Commission*, 295 U.S. 285 (1935); *Morf* v. *Bingaman*, 298 U.S. 407 (1936); *Ingels* v. *Morf*, 300 U.S. 290 (1937); *Dixie Ohio Express Co.* v. *State Revenue Commission*, 306 U.S. 72 (1939); *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583 (1939); *McCarroll* v. *Dixie Greyhound Lines Inc.*, 309 U.S. 176 (1940); *Aero Mayflower Transit Co.* v. *Board of R. R. Commissioners*, 332 U.S. 495 (1947); *Capitol Greyhound Lines* v. *Brice*, 339 U.S. 542 (1950); *Bode* v. *Barrett*, 344 U.S. 583 (1953).

Court in opinions under other factual circumstances has provided the vehicle by which the local jurisdictions have levied unreasonable and excessive taxes upon interstate motor carriers far beyond those existing at the time of the Court's prior decisions and certainly beyond the exactions contemplated by the Court. In light of the very moderate taxes involved, the objections to local taxation previously considered by the Court were, in large part, merely technical objections. Present taxation by many states including Missouri has reached such proportions that it can no longer be ignored as lacking sufficient consequence to warrant federal intervention to protect the unfettered flow of commerce between the states. A summary of the local taxes involved in the cases previously considered by this Court (where known) together with examples of present license fees in some of the 22 states in which Riss operates, appears below[4], graphically dem-

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4. *Present License Fees:*

Missouri	$ 600.00
Illinois	1,139.00
Colorado	340.00*
Oklahoma	565.00*
Kentucky	450.00
New Jersey	240.00
New York	415.00*
Pennsylvania	325.00*
Delaware	195.00

(*tractor and trailer)

Prior Decisions:

Hendrick v. *Maryland*	$18 (annually)
Kane v. *New Jersey*	$10 (annually)
Clark v. *Poor*	Not shown in opinion
Interstate Busses v. *Blodgett*	1¢ per mile
Sprout v. *South Bend*	$50 (annually) (municipal)
Interstate Transit v. *Lindsey*	$750 (stricken down)
Continental Baking Co. v. *Woodring*	5/10 mill per gross ton mile.

onstrating the new ci' cumstances existing since this Court last considered this subject.

The door through which the states have entered the field of taxation of interstate motor carriers to the extreme degree now existing was opened by the Court in *Aero Mayflower Transit Co.* v. *Georgia Public Service Commission,* 295 U.S. 285. Appellants frankly state that, so far as the issue of the burden upon interstate commerce is concerned, this appeal seeks a reconsideration and clarification of certain language in the opinion in that case. Specifically, Mr. Justice Cardozo, speaking for the Court, said:

> (l.c. 289) "The fee is for the privilege for a use as extensive as the carrier wills that it shall be. There is nothing unreasonable or oppressive in a burden so imposed. Cf. Clark v. Poor, 274 U.S. 554, 71 L.Ed. 1190, 47 S. Ct. 702, and Hicklin v. Coney, 290 U.S. 169, 78 L. Ed. 247, 54 S. Ct. 142, supra. One who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he may."

This language was used in a case involving an annual registration fee of $25.00. The language is being used here as

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Hicklin v. *Coney*	Not shown in opinion
Aero Mayflower v. *Georgia*	$25 (annually)
Morf v. *Bingaman*	$7.50 (trip permit)
Ingels v. *Morf*	$15 (90 day permit—stricken down)
Dixie Ohio Express v. *State*	$125 (annually) (8 mills per mile)
Clark v. *Paul Gray, Inc.*	$15 (six months)
McCarroll v. *Dixie Greyhound*	$15.45 (daily—approx. 1.3¢ per mile)
Aero Mayflower v. *Board*	$25 (annually)
Capitol Greyhound v. *Brice*	2% of value of vehicle paid only upon titling)
Bode v. *Barrett*	$1750 (decided on other grounds)

the justification for an annual registration fee in Missouri of $600.00 per tractor and covers tractors that only use Missouri highways for a very small percentage of their total mileage (Appendix B, p. A67).

As an abstract statement, the language is perhaps not subject to serious criticism. The practical extensions of it, however, have, as in this case, led to the assessment of state motor vehicle registration fees which in their practical effect constitute serious and very real impediments to the flow of interstate commerce. The language of the dissenting opinion in *Capitol Greyhound Lines* v. *Brice*, 339 U.S. 542, aptly hypothesizes and forecasts the circumstances existing here in fact and illustrates the actual results of the rule stated in the *Aero Mayflower* case. It was there said:

> (l.c. 557) "But a tax levied for the privilege of using roads, and not their actual use, may, in the normal course of operations and not as a fanciful hypothesis, involve an undue burden on interstate carriers. While the privilege extended by a State is unlimited in form, and thus theoretically the same for all vehicles, whether interstate or intrastate, the intrastate vehicle can and will exercise the privilege whenever it is in operation, while the interstate vehicle must necessarily forego the privilege some of the time simply because of its interstate character, i. e., because it operates in other States as well. In the general average of instances, the privilege is not as valuable to the interstate as to the intrastate carrier. And because it operates in other states there is danger —and not a fanciful danger—that the interstate carrier will be subject to the privilege taxes of several States, even though his entire use of the highways is not significantly greater than that of intrastate operators who are subject to only one privilege tax."

By the very nature of appellants' operations over its network of certificated routes in 22 states it is obvious that

appellants cannot use each of their vehicles in Missouri to the maximum extent allowed by the privilege granted by registration of each vehicle. The evidence that in the normal course of operations some of the vehicles were only briefly in the state graphically demonstrates the practical truth of the observations of the foregoing dissenting opinion (Exs. 691, 692). As this Court many years ago said in *Galveston, Harrisburg & San Antonio Railway Company* v. *Texas*, 210 U.S. 217:

> (l.c. 225) "Regulation and commerce among the states both are practical rather than technical conceptions, * * *."

The technical conception now being applied by Missouri and other states based upon a purely theoretical unlimited privilege basis rather than upon the more practically conceived basis set forth in *Interstate Transit* v. *Lindsey*, 283 U.S. 183[5], bids fair ultimately to disrupt efficient interstate transportation by all motor carriers.

Nor can it be said that there is an alternative short of clarification by the Court of the language in *Aero Mayflower*. So long as the language stands in its present form, it is a practical impossibility for an interstate motor carrier to demonstrate that it is being charged a fee in excess of fair compensation for use of local highways. Here, as mentioned by the Missouri Supreme Court (Appendix A, pp. A18-A19), appellants offered extensive evidence that ap-

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5. It was there said (l.c. 190): "But since a state may demand of one carrying on an interstate bus business only fair compensation for what it gives, such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes. Being valid only if compensatory, the charge must be necessarily predicated upon the use made, or to be made, of the highways of the state. *Clark* v. *Poor*, 274 U.S. 554, 71 L. Ed. 1199, 47 S. Ct. 702, *supra*."

pellants would pay highway taxes per mile operated in an amount disproportionate to the cost to the State of maintaining and policing its highways[6]. This evidence was summarily dismissed by the Court below as being of no significance on the basis of the *Aero Mayflower* language unless the privilege granted by registration was "fully utilized"—a requirement which by the inherent nature of interstate transportation cannot be met.

This Court's review of the present judicial standard for local taxation of interstate motor carriers in light of current application of that standard is both necessary to appellants and important to the motor carrier industry and local taxing authorities as a whole.

II.

Denial of Equal Protection by an Equal or Greater Tax for a Lesser "Privilege".

Closely coupled to appellants' contentions that the Missouri Motor Vehicle Licensing and Registration Laws, as construed, constitute an unlawful burden upon interstate commerce, is appellants' contention that the same

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6. Appellants' evidence showed that in 1955, a typical year, appellants paid to Missouri, exclusive of tractor registration fees, $55,300.00 in trailer registration fees, fuel taxes and Missouri Public Service Commission fees. Had their 494 tractors all been registered in Missouri the total highway taxes paid to Missouri would have exceeded $351,700.00. On the basis of the 4,942,250 miles operated in Missouri during that year, such payments would have represented a charge of 7.1 cents per mile. By contrast, appellants' evidence showed that their charge for use of the turnpikes in their network of routes ranged from 4.25 cents to 5.31 cents per mile; that the construction costs of such turnpikes ranged from $440,000.00 to $2,550,000.00 per mile as opposed to an average of $170,000.00 per mile for the Missouri highways they used; and that maintenance costs were similarly disproportionate.

laws also deny interstate motor carriers equal protection of the laws contrary to Section 1 of the 14th Amendment. Appellants believe it apparent that the flat "privilege basis" fee provided for under Missouri law results in the exaction of greater fees for highway use from a carrier operating in many states than from a carrier which confines its operations to Missouri alone.[7] The interstate carrier's privilege of highway use in any one state is limited beyond that of an intrastate carrier by the very nature of the interstate operation. In short, the "privileges" are in reality unequal but the tax is the same. Accentuating this inequality is the fact that the interstate carrier is subject to the "privilege" tax of several states while the local carrier is subject to but one. The record in this appeal demonstrates that such statements are not mere abstractions but are founded on fact (R. 365-366). The demands of other states for license taxes in the form of "privilege basis" fees illustrates the dilemma of appellants where they have been faced with such demands based on

7. Appellants' evidence showed that the average annual mileage for each of its tractors was approximately 110,000 miles. Were it a local carrier whose routes were confined within the borders of Missouri, the per mile cost of registration for each tractor would therefore have approximated 5 1/2 mills. As an interstate carrier, however, its tractors were required to serve routes in many other states and the evidence showed, for example, that in 1955, a typical year, only 9.02% of its total mileage was in Missouri. Thus, the average per vehicle annual mileage in the state in that year would have been less than 10,000 miles. If required to register all tractors in the state, the per mile registration cost would, thus, have exceeded 6¢. In addition, of course, in contrast to local carriers the same tractors were subject to registration charges in other states. It is further significant to note that in 1955, while operating only 9.02% of its mileage in Missouri, appellants registered over 30% of their tractors and nearly all of their trailers in Missouri at a cost of approximately $131,000.00.

per vehicle highway operations of no greater magnitude than many local carriers subject to but one such fee.

In addition to the unequal treatment described above, the licensing and registration laws of Missouri contain, as an integral part, a provision that when any vehicle licensed in Missouri is removed from the state for a period exceeding 90 days, the owner is required to return the license tags to the Missouri Director of Revenue.[8] No refund is made of any part of the license fee paid. Thus a vehicle in an interstate fleet which touches Missouri only at intervals of more than 90 days is, by the law of Missouri, required to be successively relicensed, each time at the full annual fee. The evidence in this proceeding showed that Appellants had many such vehicles (Exs. 691, 692). This provision of the Missouri Motor Vehicle Licensing and Registration Laws has the obvious effect of taxing interstate motor carriers on an inverse basis—the less the highways of Missouri are used (if used at all), the greater the tax. Appellants believe that the discriminatory and unconstitutional effect is self-evident.

III.

Denial of Equal Protection by Refusal of Licensing Reciprocity on an Arbitrary Basis.

The Missouri Vehicle Licensing and Registration Laws provide for registration and licensing exemption for

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8. R.S.Mo. (1949), §301.120. "When the owner of a motor vehicle moves the vehicle to another state, he shall return the license plate to the director of revenue within ninety days or upon the expiration of the period of reciprocity granted by the new state of residence; or if the owner of a motor vehicle ceases to operate the vehicle in Missouri he shall return the license plate to the director of revenue within ninety days."

non-residents on a reciprocal basis.[9] In substance these provisions, as construed and applied by the Supreme Court of Missouri in this case, exempt a vehicle owned by a corporation incorporated in another state from the Missouri licensing and registration requirements only if (1) the vehicle is registered in a state which grants a similar exemption to Missouri residents and (2) the state of vehicle registration is also the state of incorporation of the corporate vehicle owner. As construed, a corporate vehicle owner is deemed a "resident" only in the state of its incorporation regardless of the location of corporate facilities in other states and domestication there.

Thus a vehicle owned by a corporation incorporated in a given state to which Missouri does not grant reciprocity could not, whether licensed in that state or elsewhere, be exempted from Missouri licensing requirements under any circumstances. Even if licensed in a third state by permission or requirement of that state, the vehicle would not be exempt from Missouri registration although the third state had reciprocity with Missouri.

In this case the State of Missouri has held that appellant Riss was liable for the payment of annual registration

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9. R.S.Mo., §301.271 (formerly §301.270 prior to repeal and re-enactment in 1957) "A nonresident owner, except as otherwise herein provided, owning any motor vehicle which has been duly registered for the current year in the state, county or other place of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner may operate or permit the operation of such vehicle within this state * * *; provided that the provisions of this section shall be operative as to a vehicle owned by a nonresident only to the extent that under the laws of the state, county or other place of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state."

and licensing fees on all of its vehicles approximating $300,000.00 for the "privilege of use" of Missouri highways because Riss is a Colorado corporation and there is no reciprocity between Colorado and Missouri. It held in effect that Riss could not, for licensing purposes, escape the stigma of its original incorporation by the lawful licensing of its vehicles in states in its system which have reciprocity with Missouri. On the other hand, a second carrier under circumstances not materially different from those of Riss except for its incorporation and licensing in a "reciprocating" state, may conduct equally extensive operations on the highways of Missouri without the expenditure of a single penny for registration and licensing fees (Ex. 697, R. 540-544).

Such discrimination admittedly is based upon no essential attribute of differing motor carriers. It is not based upon size or income; it is not based upon the number of vehicles owned or used in Missouri; nor is it based upon the weight or horsepower of the vehicles, or the actual or potential number of miles traveled. It is not based upon either use or "privilege of use" of Missouri highways. It is based solely upon the fortuitous circumstances of the identity of the *state* of the particular carrier's incorporation and upon the equally fortuitous circumstance that that state does or does not have statutes relating to motor vehicle user charges which are deemed by Missouri authorities to be compatible with the statutes of Missouri. Appellants contend that these are not reasonable classifications of carriers based upon attributes of such *carriers*. These are discriminations in application of Missouri laws based upon nothing more nor less than irrational "paper" classifications totally irrelevant to use or "privilege of use" of Missouri highways, namely, the laws of other states of the Federal Union. The vice of the classification, when

viewed in the context of the decisions of this Court relating to the power of the states to tax motor carriers in interstate commerce, becomes even more apparent when it is noted that the reason for the present lack of reciprocity between Colorado and Missouri is the enactment by Colorado of a ton-mile tax—a tax specifically based upon actual highway use rather than upon the fiction of unlimited "privilege of use".

The modern levels of state vehicle highway user charges (See Footnote 4) clearly remove this problem from the class of academic discriminations and raise it to the status of a serious practical issue as to whether the ability of an interstate motor carrier to compete with others in its class may lawfully be impaired or enhanced by state action the incidence of which is determined solely by the locale of the carrier's corporate birth.

CONCLUSION.

Appellants are not unmindful that this is an appeal from a judgment of ouster and the questions presented here for review do not include that of whether a state may oust a foreign corporation from its borders for violations of local laws repugnant to the Federal Constitution. It is not believed, however, that this is any longer open to question (*Western Union Telegraph Company* v. *State of Kansas ex rel. Coleman*, 216 U.S. 1). Nor is it believed that the State of Missouri contends otherwise. Therefore, if the statutes here in question are found to be violative of the United States Constitution, then the judgment of ouster which is based solely upon the violations of those statutes is equally un-Constitutional and invalid.

Appellants believe that the questions submitted vitally affect a large and growing segment of the nation's economic

life; that they are substantial; and that they are of public importance.

Respectfully submitted,

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APPENDIX A.

STATE of Missouri ex inf. John M. DALTON, Attorney General, Relator.

v.

RISS AND COMPANY, Inc., a Corporation, and Transport Manufacturing and Equipment Company, a Corporation, Respondents.

No. 45 396.

Supreme Court of Missouri, En Banc.

April 11, 1960.

Rehearing Denied May 9, 1960.

* * *

John M. Dalton, Atty. Gen. of Missouri, Fred L. Howard, Asst. Atty. Gen., Raymond S. Roberts, Special Asst. Atty. Gen., for relator.

John B. Gage, Laird P. Bowman, Kansas City, A. Alvis Layne, Jr., Washington, D. C. (Gage, Moore, Park & Kreamer, Kansas City, of counsel), for respondents.

HOLLINGSWORTH, Chief Justice.

This is an original proceeding in the nature of quo warranto filed on January 25, 1956, by the Attorney General on behalf of the State of Missouri, in which he seeks judgment of ouster of respondents from further exercise of the corporate franchises heretofore granted them by the State of Missouri. The information alleges that pursuant to a common plan and conspiracy respondents Riss

and Company, Inc., and Transport Manufacturing & Equipment Company, foreign corporations licensed to do business in Missouri, have willfully and continuously misused and abused the privileges so granted them by (1) repeated violations of the criminal laws and rules and regulations of appropriate state agencies; (2) failure and refusal to pay taxes and fees due the state; and (3) deliberate and constant violation of the motor vehicle maximum weight, size and registration laws, by reason whereof the state has been deprived of revenues in an amount exceeding $750,000.

The joint answer of respondents (hereinafter referred to, respectively, as "Riss" and "TM&E") denies any willful violation of the laws or regulations of this state or abuse of the corporate franchises granted them by the state; alleges (1) that any violations of regulations have been rare and unintentional, that the charges relating to violations of the motor vehicle registration laws arise out of a dispute as to the reciprocity provisions of the Missouri statutes and that respondents' construction of the meaning of those statutes was in good faith and predicated upon the advice of counsel; and (2) that the interpretation of Section 301.270 RSMo 1949, V.A.M.S., relating to the registration of motor vehicles operated by nonresidents upon the highways of this State, as contended for by relator, is violative of Article I, §§ 8 and 10, of the Constitution of the United States.

The Honorable E. C. Curtis, of Springfield, Missouri, was appointed Special Commissioner to take the testimony and to report the same with his finding of facts and conclusions of law. The evidence consists of 1,468 pages of testimony and 722 exhibits, which by diligent effort on the part of the Commissioner, aided by counsel for both parties, has been collated and condensed into a comprehensive

final report. In that report, the Commissioner has found that the evidence fell into four separate categories, to wit: (1) nonpayment of personal property taxes; (2) violation of Public Service Commission regulations; (3) violation of laws relating to the size and weight of commercial motor vehicles operated within this State; and (4) violation of motor vehicle registration laws. As to the first three of these, the Commissioner found the evidence insufficient to sustain a finding of any studied plan on the part of respondents to deliberately flout the laws of the State in those respects. Relator, at least tacitly, acquiesces in that portion of the report. Consequently, the evidence on those issues will be omitted from further consideration. (There was also a considerable volume of evidence adduced and contention made with reference to the registration of *trailers*, as distinguished from the registration of *motor tractors*, which together comprise the unit by which property is transported by motor carriers. That evidence, however, had only an indirect bearing upon the alleged violation of the registration laws by respondents in the operation of their tractor-trailer units. Consequently, no discussion of the evidence relating to the registration of *trailers*, as such, is undertaken.)

Following a detailed analysis of the evidence relating to respondents' violation of the motor vehicle registration laws of this State, the Commissioner found respondents equally guilty of willful abuse of the franchises granted to them by the State of Missouri and recommended that a writ of ouster issue as to each respondent, but that ouster be stayed upon condition of the payment of a fine by each respondent in the amount of $25,000 and the costs of these proceedings. Relator excepts to that portion of the report recommending a stay of ouster upon condition of payment of the fines suggested upon grounds that fines in that

amount, under the evidence shown, would be grossly inadequate. Respondents except to the portions of the report adverse to their contentions and in their joint brief filed upon final submission contend as follows:

(1) This action should be dismissed because relator has failed to sustain his burden of proving the allegations of the information that respondents and each of them are guilty of a studied, persistent and continuing, willful and contemptuous refusal to abide by the laws of the State of Missouri;

(2) Even if relator's interpretation of the motor vehicle registration and reciprocity statutes of Missouri is correct, a writ of ouster should not issue nor a fine be assessed because respondents acted in good faith and had reasonable grounds to believe that the vehicles owned or operated by them were licensed in accordance with the motor vehicle registration and reciprocity statutes of Missouri; and

(3) Writ of ouster should not be issued nor a fine be assessed against respondents since such an order of ouster or fine would be violative of the federal constitution as imposing a penalty for violations of statutes construed in a manner rendering them unconstitutional.

During the period of time involved in this litigation, Riss was a Colorado corporation; TM&E an Illinois corporation. (In April or May, 1956, subsequent to the filing of the instant action, TM&E reincorporated in the State of Delaware.) Riss is also licensed as a foreign corporation in Illinois, Kentucky, Maryland and Oklahoma; TM&E in Kentucky, Maryland and Oklahoma. Both are owned and controlled by Richard R. Riss and members of his family and are operated under such common ownership and control. Both maintain their principal general office

and business headquarters and keep all of their books and corporate records in Kansas City, Missouri.

Riss is a common carrier by motor vehicle operating under authority of the Interstate Commerce Commission over approximately 36,000 miles of highways in 22 states. The general area of its operations extends from Nebraska, Colorado, Oklahoma and Texas on the west and south to numerous points on the East Coast. It maintains offices in 19 states and the District of Columbia and operates, under lease from TM&E and others, 30 terminals and several garages in various states. TM&E owns certain terminal properties and other real estate, all of which it leases to Riss. It also owns and leases to Riss motor vehicle tractors and trailers for use by Riss in its operations as a common carrier.

Prior to 1954, Riss conducted its operations by leasing approximately 800 trailers from TM&E and by leasing tractors and some additional trailers from various individuals, referred to in the record as "owner-operators", who resided in many different states. The owner-operator leases provided that registration licenses should be issued by the state of the owner's residence and paid for by the owner. TM&E also owned and leased to Riss a few tractors and Riss owned a small number of tractors which it operated. All of the company-owned tractors, totaling 45 to 50, were, prior to 1954, licensed in Missouri.

In 1954, material changes were effected in respondents' methods of operation and motor vehicle registration policies. TM&E disposed of the motor vehicle equipment it then owned and purchased approximately 500 new tractors and 1,300 new trailers. All of these units were leased to Riss under long term leases, some of the leases giving Riss the right of purchase. Delivery of these units commenced

in May, 1954, and from the time the deliveries were completed Riss has conducted its operations primarily by use of these vehicles. TM&E does not lease to any one other than Riss and does not operate any of the units itself; neither does it make any profit under its leases to Riss. By the terms of these leases, Riss is required to pay all license fees, maintenance costs and personal property taxes on the leased equipment.

This action, to the extent now under consideration, involves the policies and methods pursued by respondents in the licensing of the motor vehicles operated by them upon the highways of this State since mid-1954. However, their policies and methods prior to that time are material in evaluating their actions and conduct during the period of time directly involved.

In the latter part of 1950, the State Highway Patrol began to make arrests of the drivers of Riss vehicles for violations of the motor vehicle registration laws of Missouri, the arrests being made principally in Phelps and Crawford Counties. The testimony was that these were owner-operated vehicles under lease to Riss. At that time, Section 301.010 RSMo 1949, V.A.M.S., (to which revision all statutory references herein are made unless otherwise indicated) defined the "owner" of a motor vehicle, required to be registered under the provisions of § 301.020, to mean "any person, firm, corporation or association owning or renting a motor vehicle • • • for a period greater than ten days successively." Effective July, 1952, the definition of "owner" was redefined by statute to read: "[T]he term owner shall include any person, firm, corporation or association, who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with

an immediate right of possession vested in the conditional vendee or lessee, * * * then such conditional vendee or lessee * * * shall be deemed the owner for the purpose of this law." Laws 1951, p. 696, § 1(19). (It is immaterial in this case whether Riss or TM&E is the "owner" of the vehicles involved. Concededly, one of them is.)

There seems to be some confusion as to the precise theory upon which the arrests were made. Officials of the Patrol testified that they made the arrests on the theory that Riss, by virtue of the location of its home office in Kansas City, was a Missouri resident and, as lessee for over ten days, was the owner for licensing purposes and, therefore, was required to obtain Missouri licenses for all vehicles operating upon Missouri highways. It is clear, however, that the Missouri officials were insistent that irrespective of whether Riss was a resident of Colorado or Missouri it was violating the laws of Missouri in operating any of its motor vehicles over Missouri highways without Missouri license plates.

Sgt. Dorsey Arnold (of the Patrol) estimated that these arrests totaled approximately 150 in the period from 1950 to 1952. During the time these arrests were in progress, numerous discussions were held between the officers of the Patrol and various attorneys representing Riss, at which Riss attorneys told the officers that the home office of Riss was in Colorado, later told them that Riss' home office was in Missouri, and later that Riss was a resident of several states in which it did business; that the attorneys for Riss also stated that one of the cases would be appealed or a declaratory judgment action filed and a final decision obtained as to whether (a) Riss was the owner of the leased vehicles for licensing purposes and (b) Riss was a Missouri resident; and that the Patrol was requested by attorneys for Riss to cease arrests until the matter was

tested in the courts. William C. Dannevik, the executive vice-president and general counsel of Riss, testified that in 1951 a decision was reached to make a test case of one of the arrest charges on an agreed statement of facts.

Awaiting action in that behalf, the Patrol stopped making arrests for a time. Stipulations of fact were agreed to by the prosecuting attorney and counsel for Riss in certain of the cases pending against Riss drivers. One of the cases was submitted to the court upon agreed facts and the remaining cases were held in abeyance. The submitted case resulted in a conviction and fine under date of October 23, 1951, from which no appeal was taken. Riss officials testified that the reason for not appealing was that, after the change in the statute defining the word "owner", they felt that the primary question involved in the driver arrest cases became moot. In any event Riss paid the fine on November 3, 1953, and about the same time disposed of the other pending cases in a similar manner.

Following the change in the statute defining the meaning of the word "owner" in July, 1952, arrests of Riss vehicles fell off sharply and few arrests for improper licensing were made from that date until the middle of 1954. However, Major Edward Hockaday of the Highway Patrol testified that during that interim he had a conference in patrol headquarters with James T. Blair, an attorney for Riss, at which there was a general discussion of licensing in Missouri and Riss operations. Hockaday contended that Riss should not be operating tractors in Missouri with foreign licenses; Blair contended that Riss was correct in its licensing. It was agreed that Riss would file a declaratory judgment action in order, as stated by Blair, to clarify the law. Hockaday said that because of this understanding the Patrol again for a time let up on arrests of drivers of Riss vehicles for licensing violations.

In 1954, after Riss placed in operation the new tractors and trailers purchased by TM&E and leased to Riss, the Patrol again commenced making arrests of Riss vehicles bearing foreign licenses. Prior to and after the acquisition of these new vehicles there was a series of conferences between State officials and Riss representatives regarding the licensing of these vehicles. William G. Dannevik testified that prior to the delivery of the new vehicles he called upon Col. Hugh Waggoner, Superintendent of the Patrol, and Robert L. Hyder, Chief Counsel for the Missouri State Highway Commission, for the purpose of discussing his licensing problems. He said that at this conference he proposed to license Riss vehicles on a mileage prorata basis, registering in Missouri the percentage of vehicles that the miles traveled in Missouri bore to total system miles. Dannevik denied that he predicated his proposal upon an agreement to cease arrests, although he admitted that previous arrests were discussed. He said that Hyder told him he would consider the proposal, but later advised him that under Missouri law there could be no agreement to a distribution of licenses on a mileage basis.

Mr. Hyder testified that James T. Blair, then an attorney for Riss, was also present at the conference with Dannevik and that Dannevik and Blair proposed to license 75 additional tractors in Missouri if Hyde would agree not to prosecute Riss for licensing violations. He said that Blair and Dannevik also told him that Riss might withdraw all licenses from Missouri if the proposition was not accepted. With reference to another conference, Hyder stated that Blair requested the Patrol to stop arrests until a test case in the form of a declaratory judgment action could be filed by Riss. Hyder agreed to confer with Blair and to try to work out a stipulation of facts for such a suit, but did not agree to stop arrests. Nothing was ever done

about working out such a stipulation and the next Hyder heard was that an injunction suit had been filed by Riss to enjoin arrests.

Col. Waggoner had several conferences with Dannevik and Blair. He testified that Dannevik proposed that Riss be permitted to license its vehicles on a mileage prorata basis and that there be no further arrests. He told Dannevik that under an opinion of the Attorney General he had no authority to make any agreement permitting licensing on a prorata basis and that Riss must license in Missouri all its vehicles operating upon Missouri highways. Mr. Blair, who in 1957 became Governor of Missouri, testified that he and Dannevik proposed to license either on a mileage basis or a basing point system and that they offered to license a substantially larger number of vehicles than the Riss operation represented in Missouri if Riss would be "let alone" until the matter was settled, but that Hyder turned the proposal down.

Sgt. Arnold and Jay White, prosecuting attorney of Phelps County, testified that in 1954 and later in 1955 the attorneys representing Riss agreed to take an appeal from one of the arrest cases then pending. Mr. White and the Riss attorneys agreed to a stipulation of facts which was filed in one of the case late in 1954, and White continued the other cases on the strength of the agreement to appeal if the result was adverse to Riss. A conviction did result in that case, but no appeal was taken. Convictions were later obtained in the other cases, but no appeal was taken in any of them and the fines were paid by Riss. Governor Blair testified that he advised Riss against an appeal because in his opinion it would not afford a proper test of the matters that were in controversy. Mr. Dannevik testified that Riss decided to file an injunction suit against the Highway Patrol to enjoin further arrests. Such an

action was filed in the Circuit Court of Cole County on August 7, 1954. During an absence of the circuit judge from the county, a temporary restraining order was procured from the judge of the magistrate court of Cole County. That temporary restraining order was promptly dissolved by order of the circuit judge of Cole County on August 12, 1954, and on August 19, 1954, the action was ordered dismissed on grounds of failure of the petition to state facts sufficient to warrant injunctive relief. No appeal was taken.

On November 1, 1954, Riss filed a suit for injunction and declaratory judgment in the Circuit Court of Jackson County, whereupon the Honorable John F. Cook, Judge of Division Two of said Court, on November 3, 1954, without hearing, issued an order temporarily restraining the arrest of Riss drivers operating vehicles leased from TM&E and others and bearing license plates of the states in which they were domiciled. This petition and order were attacked by counsel for the Patrol and the other defendants because of lack of jurisdiction in the Jackson County Circuit Court. On September 12, 1955, that court was, by order of the Supreme Court of Missouri, prohibited from proceeding further in the cause. See State ex rel. Toberman v. Cook, 365 Mo. 274, 281 S.W.2d 777. During the period from November 3, 1954, until September 12, 1955, while the Jackson County injunction was in effect, Riss operated free from arrest on licensing charges.

On July 11, 1955, while the Jackson County case was pending in the Supreme Court, Riss filed in the Circuit Court of Cole County a suit identical to that pending in Jackson County. Dannevik explained this suit by stating that he had begun to doubt that the action in Jackson County could be maintained and that the case in Cole County was filed to make sure there would be no lapse

in the restraining order if the decision of the Supreme Court should be adverse to Riss in the Jackson County case. The Cole County case was dismissed on January 20, 1956, for failure to plead over after a decision by the court that no cause of action was stated. Following the filing of the instant action on January 25, 1956, Riss appealed from that order on January 30, 1956. Attorney General Dalton testified that the suits filed were attacked by the State for the reason that they did not plead facts sufficient to properly present the issues and that he so advised Mr. Robert Riss, the President of Riss & Company. On April 8, 1957, the Supreme Court affirmed the action of the trial judge in dismissing the action upon grounds of failure of the petition to state a cause of action. See Transport Manufacturing & Equipment Co. v. Toberman, Mo., 301 S.W.2d 801.

On October 27, 1954, after the first injunction in Cole County was dissolved, General Dalton received a letter from Robert Riss asking for a conference. This conference was set for November 8, 1954. Between those dates, the suit in Jackson County was filed and the temporary restraining order issued, the date of that order being November 3, 1954. General Dalton considered this a badge of bad faith. He testified that toward the end of the conference held on November 8, 1954, Mr. Riss stated that several of Dalton's friends would see him and tell him what type of people the Riss people were. Dalton said he then told Mr. Riss not to send any politicians to see him, but to bring the law and if they were right he would agree with them, but, if not, he would expect Riss to pay the taxes and licenses due the State of Missouri. Dannevik testified that General Dalton opened the conference with a statement to him not to send any politicians to Dalton's office, that he would talk to them on the basis of the law.

Dannevik said the conference then continued and they discussed the licensing problems of Riss and that Mr. Riss requested an interpretation of the law by Dalton, but that Dalton said he could not give private citizens an interpretation of the law. Robert Riss denied that he told Dalton that several of Dalton's friends would call upon him in behalf of Riss.

General Dalton testified that on January 5, 1955, Senator Charles L. Madison, a member of the State Senate from Kansas City, called on him in connection with the Riss licensing problems and told him that if Dalton would "leave the Riss Company alone", Riss would license 200 tractors in Missouri. Dalton said that he replied that he had no authority to and would not compromise. Senator Madison testified that, at the suggestion of Mr. Riss, he did call upon General Dalton; that he told Dalton he appeared on behalf of a constituent and did not represent Riss as a lawyer. He said that he had a chance meeting with Mr. Riss in Kansas City and that Mr. Riss asked him to see Dalton on behalf of Riss & Company and told him that Riss & Company would license 200 vehicles in Missouri. Madison said that in his conference with Dalton he conveyed this information; that after Dalton explained the matter to him he felt "rather apologetic" and did not report back to Riss. Dannevik and Robert Riss denied any knowledge of Senator Madison's visit to Dalton and denied having ever talked to him about their licensing problems. Richard R. Riss, the former president and principal owner of Riss, testified that he jokingly mentioned to Senator Madison that Riss was having licensing trouble with the State of Missouri, but denied that he authorized Madison to see Dalton on behalf of Riss or to offer to license 200 tractors.

We turn now to consideration of the policies and practices pursued by Riss subsequent to mid-1954 in operating its tractor-trailer units upon the highways of Missouri in interstate commerce with registration licenses issued by states other than Missouri, which resulted in the arrest of many of the Riss drivers. When these tractors were acquired in 1954, respondents caused them to be registered and licensed as follows: New York, 298; Oklahoma, 56; Kentucky, 41, and Missouri, 96. In the first part of 1955, they were registered and licensed as follows: New York, 280; Oklahoma, 28; New Jersey, 28, and Missouri, 106. In 1956, the registration list showed: Pennsylvania, 279; New Jersey, 46; Oklahoma, 12; and Missouri, 156. In April or May of 1956, TM&E was reincorporated in the State of Delaware and all Pennsylvania tractor licenses were transferred to Delaware, the stated purpose being to register the vehicles in the state of incorporation so that Missouri would afford reciprocity as to them.

The evidence showed that subsequent to July, 1952, the cost of tractor licenses in Missouri for the Riss vehicles was $600; in New York, about $200; in Pennsylvania, approximately $300; in Delaware, $250 to $350; and in Oklahoma, $120. The cost of licenses in Colorado, the state of incorporation of Riss, was not shown. (However, the evidence shows that Colorado has a ton-mile tax and that, therefore, there is no reciprocity between it and Missouri.) It was admitted by Dannevik that licenses were not purchased in Illinois, the state of incorporation of TM&E, because they were too high. It should also be here noted that, although Robert Riss had testified that he considered the "domicile" of owner-operated tractors to be the domicile of the driver of the vehicle, the evidence clearly shows that none of the company-owned tractors operated by Riss was ever "domiciled" in New York, New Jersey,

Pennsylvania or Delaware. Some were "domiciled" in Ohio, Illinois, Michigan, Nebraska, Kansas, Colorado and Texas, but, even so, Riss did not buy registration licenses in any of those states.

A special check of Riss vehicles crossing Patrol weight stations in Missouri from 8:00 a.m., March 16, 1955, to 12:00 midnight, March 19, 1955, showed that of 165 Riss tractors crossing the scales in the four-day period, 92 had foreign licenses; and that of the 430 trips checked a total of 205 were made by vehicles bearing foreign licenses. Other evidence showed that of almost 35,000 trips made by company-owned vehicles in 1954 and 1955 and touching the State of Missouri more than 17,500 of them were made by tractors bearing foreign licenses.

Relator introduced in evidence copies of many thousands of "manifests", issued by Riss to its drivers, showing trips made by company-owned Riss vehicles on Missouri highways in 1954 and 1955 designated as "across state", that is, trips other than those originating in Kansas City or St. Louis and moving directly out of the State. These trips include both interstate and intrastate vehicle movements. These manifests reveal that in 1954 Riss vehicles made 3,189 cross-state trips with foreign licenses attached to its tractors and in 1955 made 7,785 trips with foreign licenses. The instructions on substantial numbers of these manifests directed the driver to proceed via Highway 40 to Kansas City if the tractor did not have a Missouri license. Some directed the driver to use Highway 66 if the truck had Missouri or New Jersey licenses, otherwise to go through Kansas City on Highway 40. A few had instructions to by-pass Missouri scales or to go through when the scales were closed. (Most of the arrests in Missouri were made at the Patrol scales, principally on Highway 66 and not on Highway 40.)

In support of their assertion that their licensing policy has been in good faith, certain of respondents' officers testified that an executive committee was created within the Riss organization and given the responsibility of determining where the vehicles should be licensed. Robert Riss, a member of that committee, testified that reciprocity statutes are very complex and that the committee referred the question to the Riss legal department and made its decisions upon the advice of its legal counsel. Governor Blair testified regarding his personal views of the registration laws and particularly the reciprocity statutes, but there is no evidence that he advised Riss in accordance with the views he expressed at the trial. Mr. Dannevik also expressed his opinions on the subject. Both he and Governor Blair stated that the Missouri statutes *are broad enough to authorize* prorata registration and that this formerly had been the practice in Missouri. Mr. Dannevik testified that in 1954, after a general study of the problem, he concluded it was necessary that the vehicles be licensed in states to which othe states would grant reciprocity and that as initially licensed Riss should have no difficulty over the entire system. He stated that he conferred with Missouri officials before making his conclusions. He admitted, however, that after those conferences were concluded *he had some doubt that Missouri would recognize the registrations he planned to make.* (The Special Commissioner describes that admission as a "masterpiece of understatement.")

Richard R. Riss testified that at one time Riss had an agreement with the State of Missouri and the State of Illinois providing for an equal division between those states of license plates on Riss vehicles traveling between Kansas City and Chicago and also had a separate agreement of a similar nature with Missouri and Oklahoma. He was un-

able to give the names of the persons with whom he made the agreements, but stated that they were taken up through the Public Service Commission. He knew of no such agreement being entered into since January 1, 1950.

Governor Blair testified that a basing point and pro-rata system of licensing has been in effect in Missouri for many years "*without benefit of statute*" and that reciprocal agreements have been made which include both registration and Public Service Commission permits. He did not mention any specific agreements concerning Riss and said that any agreements made would be in writing. He admitted that the agreements had nothing to do with registration of vehicles under the law in effect during the period involved in this action and his testimony indicates that those agreements concerned registration fees as formerly collected by the Public Service Commission under a statute then in effect. None of the written agreements he referred to was introduced in evidence.

The deposition of John Randolph, former General Counsel for the Missouri Public Service Commission and later a member of that Commission, was introduced in evidence. He testified that certain agreements were made with Riss through conferences with Richard Riss and James T. Blair. Although he stated that these agreements involved both registration and P.S.C. permits, he admitted that neither he nor the Public Service Commission had any authority to make reciprocity agreements regarding registration and later stated positively that the only agreements he made involved P.S.C. permits, and those alone. He did say, however, that he conferred with the Commissioner of Motor Vehicles at the time the agreements were made, so that "it would all be in agreement"; that the Commissioner of Motor Vehicles at times participated in the conferences and that the purpose was to work out a uniform licensing.

He said that the Highway Patrol was also advised of all such agreements. He testified that he knew of no agreement between Riss and the State of Missouri to the effect that licenses on Riss vehicles traveling from Kansas City to Chicago would be divided equally between Missouri and Illinois. He also testified that the Public Service Commission recognized principal offices of motor carriers in other states and granted reciprocity to companies such as Riss for vehicles fully licensed in states where a principal office was located. By "fully licensed" he said he meant P.S.C. licenses and also registration.

In support of their contention that registration fees based upon a prorata basis constituted *a fair and equitable method*, respondents introduced in evidence: (1) a copy of an eleven-state reciprocal agreement (to which Missouri is not a party) wherein the states involved have agreed to recognize registration of interstate vehicles; (2) evidence tending to show that in 1955 the total system miles traveled by Riss equipment was 54,735,470 miles and that the total of Missouri miles traveled was 4,942,250 miles—substantially 9% of the total; (3) that 101 of their tractors were out of the state for a period of 90 or more consecutive days, the total being 122 of such occasions; and (4) that in 1955, of a total of 90,303 trips, only 26,791 touched this State.

In support of their assertion that the motor vehicle licensing law as construed by relator is unconstitutional as an undue burden on interstate commerce, respondents offered extensive testimony in the form of exhibits and oral evidence. This evidence consisted of proof of the cost per mile to Riss for its operations over toll roads in different states; the maintenance and operational costs of some of the toll roads; the construction costs and repair and maintenance expense of certain Missouri highways;

the miles traveled by Riss trucks in Missouri and the amount of payments made by Riss to the State of Missouri. By a series of calculations, respondents concluded this proof establishes that, if relator's theory of the proper interpretation of Missouri registration laws is adopted, respondents would pay the State of Missouri in highway taxes per mile an amount disproportionate to the cost to the State of maintaining and operating its highways.

Sections 301.020 and 301.270, as they existed prior to repeal and re-enactment in 1957 (new §§ 301.020 and 301.271), set forth the law of Missouri relating to registration of motor vehicles operating upon the highways of Missouri during all of the time here involved. Section 301.020, insofar as pertinent, provided:

"*Every owner of a motor vehicle or trailer*, which shall be operated or driven upon the highways of this state, *except as herein otherwise expressly provided*, shall file * * * an application for registration * * containing: (1) a brief description of the motor vehicle to be registered * * *; (2) the name, residence and business address of the owner of such motor vehicle." (Emphasis supplied.) The exception above emphasised, as contained in Section 301.270, reads:

"A nonresident owner, except as otherwise herein provided, owning any motor vehicle which has been duly registered for the current year in the state, country or other place *of which the owner is a resident* and which at all times when operated in the state has displayed upon it the number plate or plates issued for such vehicle *in the place of residence of such owner* may operate or permit the operation of such vehicle within this state * * *, provided that the provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only

to the extent that under the laws of the state, country or other place of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state." (Emphasis supplied.)

The latter section grants such reciprocity, upon the conditions therein set forth to the owner and not to the vehicle. Thus it is clear that to be entitled to reciprocity (1) the owner must be a nonresident of Missouri and (2) the vehicle must be currently registered in the state of which the owner is a resident.

Respondents insist, however, that § 301.270, when read with certain other statutes "in pari materia and cognate therewith," is fairly subject to an interpretation that the terms "resident" and "nonresident" mean *commercial* "resident" or "nonresident" and that vehicles properly registered in states of the commercial residence of a corporation are not required to be licensed in Missouri under said reciprocity section. They cite in support of that contention the following cases: City of St. Louis v. Temples, Mo. App., 149 S.W.2d 888; State v. Brunow, Mo. App., 320 S.W.2d 80; State v. Tustin, Mo. App., 322 S.W.2d 179; and Rummel v. Peters, 314 Mass. 504, 51 N.E.2d 57. In Temples, the St. Louis Court of Appeals held an ordinance of the City of St. Louis, under which the city had levied a license tax upon a motor vehicle owned by a Missouri corporation having its principal office in Sikeston and operated out of a freight terminal in St. Louis, was so worded as to apply to any owner whose truck was regularly engaged in business in the City of St. Louis. Brunow was submitted upon an agreed statement of facts. The court noted and emphasized the agreed statement and held that, based on such an agreed statement, the operator of the foreign motor vehicle there involved was exempt from

prosecution for unlawful operation in Missouri within the exemptions of a reciprocal agreement existing between Missouri and Iowa. The peculiar situation presented in Brunow was noted in our recent case of Transport Rentals, Inc. v. Carpenter, Mo. Sup. 1959, 325 S.W.2d 745 (to which we will advert), wherein we held that Brunow was authority only upon the basis of the facts therein stipulated. In Tustin the Springfield Court of Appeals, in 1959, held that the fact of the sole operation of the business of a Delaware corporation in the State of Indiana justified holding it to be a resident of Indiana and entitled to reciprocity in the operation of a motor vehicle in Missouri. The decision in that case is directly in conflict with Transport Rentals, Inc. v. Carpenter, supra. The Massachusetts case, Rummel v. Peters, supra, was decided on the basis of the specific language of a Massachusetts statute. (See also in this connection 60 C.J.S. Motor Vehicles § 68, page 248, which notes the holdings of the Massachusetts courts construing the registration statutes of that state.) For reasons hereinafter stated, none of these cases is controlling or persuasive that Missouri's reciprocity statute is fairly susceptible to the interpretation contended for by respondents.

Respondents have also cited in support of their contention that they are residents of each state in which they purchased licenses the following cases: City of St. Louis v. Wiggins Ferry Co., 11 Wall. 423, 78 U.S. 423, 20 L. Ed. 192; State ex rel. Henning v. Williams, 345 Mo. 22, 131 S.W.2d 561. Those cases do hold that a corporation may, for certain purposes, such as service of process and liability for payment of personal property taxes, have a residence in a state other than the state of incorporation. However, in each of those cases it was held *that the legislature had intended to include foreign corporations as residents of*

the state for the particular purpose involved. See State ex rel. Northwestern Mut. Fire Ass'n v. Cook, 349 Mo. 225, 160 S.W.2d 687, 689 et seq. An examination of the wording of the Missouri registration statutes reveals nothing to indicate an intention to treat foreign corporations as residents of the State of Missouri or of any state other than the state of incorporation. Section 301.270 differentiates between residents and nonresidents and grants certain privileges to nonresidents not permitted to residents of the State. The very purpose of § 301.270 is to permit the use of our highways without registration by a class described as nonresidents, which are defined by § 301.010 as residents of a state other than Missouri. Presumably, therefore, foreign corporations are included in this definition of nonresidents, as no intention on the part of the legislature to exclude them can be found in the statute. Similarly, a review of the motor vehicle registration laws of Oklahoma (Okla.Stat.Ann., Title 47, § 22.5), New Jersey (N.J.Rev.Stat., Title 39, Ch. 3, Art. 20), New York (McKinney's Consol.Laws N.Y., c. 71, Vol. 62A, Art. 3, § 11, Vehicle and Traffic Laws) and Pennsylvania (Purdon's Penna.Stat.Ann., Title 75, § 272) reveals nothing to indicate an intention to recognize foreign corporations as residents of those states for the purposes of their motor vehicle registration laws. (Concededly, the law of Kentucky [Baldwin's Ky.Rev.Stat. 1955, §§ 186.050, 186.055] is not clear, as that state is a party to a reciprocal agreement with ten other states, but, as stated, the agreement does not include Missouri. It appears that Kentucky recognizes licensing in the state of domicile, not on the basis of residence in that state, but on the basis of reciprocal contract.)

Respondents also cite certain provisions of the Public Service Commission Act especially §§ 390.031 (11) and 390.041, which they contend evidence an intent that those

sections consider the established locale of operations of motor vehicles as controlling criteria. They also direct our attention to § 386.220 (of the Public Service Commission Act) in support of their contention that the terms "resident" and "nonresident", as found in § 301. 270, should be construed to refer to commercial or business situs residence. Section 386.220 authorizes the Public Service Commission to enter into reciprocity contracts with officials of other states "to the end that any motor carrier of passengers or property who or which is a nonresident of the state of Missouri and operates motor vehicles into, out of, or through this state as a for hire motor carrier and who has complied with the laws of the state of his or its residence and paid all fees required by the state of his or its residence shall not be required to pay fees prescribed in section 390.110, RSMo 1949."

It must be borne in mind that the motor vehicle registration laws, with which the instant action treats, are completely distinct and separate from the regulatory laws administered by the Public Service Commission and that the "licenses" issued by the P.S.C. to motor carriers have no connection whatever with fees (also called licenses) required by the registration laws. The former deal with every motor vehicle operating upon the highways of this State; the P.S.C. laws operate exclusively upon carriers. Concededly, the P.S.C. has no jurisdiction whatever over the former. This is exemplified in the deposition of John Randolph, former counsel for the Commission, wherein he unequivocally stated that the agreements made with carriers, including Riss, with reference to the "licensing" of the motor vehicles used by carriers in this State did not purport to extend to the registration of such vehicles under §§ 301.020 and 301.270.

And, finally, respondents cite Section 301.120, which reads:

> "When the owner of a motor vehicle moves the vehicle to another state, he shall return the license plate to the director of revenue within ninety days or upon the expiration of the period of reciprocity granted by the new state of residence; or if the owner of a motor vehicle ceases to operate the vehicle in Missouri, he shall return the license plate to the director of revenue within ninety days."

They insist that this provision "definitely attaches the matter of licensing to circumstances connected with the situs of operation of the licensed vehicle rather than the domiciliary residence of the owner." The statute, if not an anachronism, in practice is notable only by reason of its nonobservance. Respondents are not charged with any violation of it; neither do they claim ever to have considered its provisions in their operations in this state; nor that they have complied with its provisions. In fact, it seems apparent they discovered it only recently. Carefully read, the statute seems to mean no more than that when an owner of a vehicle licensed in Missouri no longer has any lawful right to use a Missouri license plate theretofore issued, it should be returned to Missouri. Primarily, perhaps, its purpose was to prevent lapsed Missouri license plates from being used on automobiles for which they were not issued. But, whatever its purpose, it sheds no light upon the plain and unambiguous language of the particular statutes here under consideration, to which we now direct our attention.

The bald facts then are that Riss is incorporated under the laws of Colorado and TM&E was incorporated under the laws of Illinois, yet not one of the vehicles operated by either of them upon the highways of this State

was registered in either the State of Colorado or the State of Illinois. Therefore, the essential question is: Where is the *residence* of the "owner" of the vehicles here involved within the meaning of the reciprocity statute, § 301.270, which, by express terms, limits reciprocity to a *vehicle registered in the state of which the owner is a resident?*

Section 301.010 of the motor vehicles registration laws defines a nonresident to be "a resident of a state or Country other than state of Missouri." The general rule is clear that a corporation is a resident of the state of its incorporation and only of that state, although its officers and stockholders may reside elsewhere, and though it may do business in other jurisdictions. State ex rel. Northwestern Mut. Fire Association v. Cook, 349 Mo. 225, 160 S.W.2d 687, 689; Fletcher Cyclopedia Corporations, Perm. Ed., 1931, Vol. 8, § 4025, page 435. That text, at page 440, elucidates as follows:

> "The rule is also well settled that the legal existence, the home, the domicile, the habitat, the residence, the citizenship of the corporation can only be in the state by which it was created, notwithstanding it may lawfully do business in other states, therefore as to all other states it is a foreign corporation, unless it is completely domesticated so as to become a new creation, and at least for jurisdictional purposes corporations will be conclusively presumed to be citizens and residents of the state by which they were created. The committee of the American Law Institute on the restatement of the Conflict of Laws has adopted this statement as to the domicile of a corporation. Not only is the fact of the citizenship, habitancy and residence of a corporation settled beyond the point of refutation, but the courts, with but few dissenting voices, assent to the proposition. * * *."

And on page 443, the text continues:

> "It may do business and maintain agencies in another state if its charter permits, and that right is not denied by local law; its officers, directors and stockholders may reside therein; it may be denominated a domestic corporation, be vested with citizenship and be given a local residence by the statutes of such state, yet it continues to be a citizen, inhabitant and resident only of the state by which it was created except so far as the operation of local laws requires that it be regarded as having a local citizenship, habitancy, or residence as the case may be; * * *."

The universality of the rule thus announced, as it applies to motor vehicle registration under statutes worded similarly to the Missouri statutes, is stated in 20 C.J.S. Corporations § 1794, page 17, and also followed in Vandevoir v. Southeastern Greyhound Lines, 7 Cir., 152 F.2d 150, 152; Western Express Co. v. Wallace, 144 Ohio St. 612, 60 N.E.2d 312; and State v. Garford Trucking, Inc., 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407. In the latter case, Garford, a New Jersey corporation operating as a motor carrier in 12 different states, including Rhode Island, operated one of its vehicles based and registered in Rhode Island into and through New Jersey. Following acquittal of operation of an unregistered vehicle in New Jersey, the Supreme Court of that state, upon appeal by the state, held, 72 A.2d loc. cit. 854:

> "Garford is not a 'nonresident' of New Jersey; it is domiciled and resident here. A corporation created and existing under the laws of New Jersey may have a 'commercial domicile' or 'business situs' elsewhere for taxation and other purposes; but it is nonetheless domiciled and resident in the state of its creation, for a corporation is domiciled in the state or sovereignty under which it has its being, and there also it has the

residence which is inseparable from domicile. A corporation lives and dwells in the jurisdiction whence it derives its existence, although it engages in business elsewhere under local authority. A corporate entity 'must dwell in the place of its creation, and cannot migrate to another sovereignty'."

And further, 72 A.2d loc. cit. 855:

"By the plain terms of the [reciprocity] act, 'nonresident' is one who is not a resident of New Jersey. Registration in a foreign jurisdiction of the motor vehicle of a resident of New Jersey does not confer the right of free use of the highways of this state. When we consider the policy of the statute, all doubts as to meaning disappear. Free operation is purely a measure of reciprocity in favor of the nonresident owner whose state accords the same privilege to residents of New Jersey."

And finally, respondents' contention as to the meaning of our reciprocity statute, § 301.270, has been expressly denied in the case of Transport Rentals, Inc. v. Carpenter, Mo., 325 S.W.2d 745, decided by Division Two of this court on July 13, 1959, wherein we said, loc. cit. 748:

"Under the authorities of states having like statutory provisions, the word 'resident' in section 301.270, when applied to a corporate owner of a motor vehicle has reference to its citizenship or domicile in the sovereignty or state under the law of which it has its being, although it engages in business elsewhere. State v. Garford Trucking, Inc., 4 N.J. 346, 72 A.2d 851, [1-8], 16 A.L.R.2d 1407; Western Express Co. v. Wallace, 144 Ohio St. 612, 60 N.E.2d 312, 315; 8 Fletcher, Cyclopedia Corporations, § 4025. See also State ex rel. Northwestern Mut. Fire Ass'n v. Cook, 349 Mo. 225, 160 S.W.2d 687 [2]; Herryford v. Aetna Inc. Co., 42 Mo. 148, 152; Vandevoir v. Southeastern Greyhound Lines, 7 Cir., 152 F.2d 450 [2]."

Therefore, saving only for further consideration respondents' contention of the unconstitutionality of our registration statutes when construed as above stated, we must and do hold that the privilege of reciprocity, as defined in § 301.270, is limited to the respective states of respondents' incorporation.

Respondents' contention in the latter respect is that when this court construes our motor vehicle registration statutes in the manner above indicated, we place an illegal and unreasonable burden upon interstate commerce in violation (1) of Article I, §§ 8 and 10, of the Constitution of the United States, in that such construction results in the imposition of charges for the use of our highways in interstate commerce by respondents in excess of fair compensation; and (2) of the equal protection clause of the 14th Amendment of that Constitution. In support of those contentions, respondents assert and have undertaken to establish by evidence that the cost per mile *for the actual use* made by them of the highways of Missouri is unreasonably high.

The motor vehicle registration tax is imposed upon every owner whose motor vehicle is operated or driven upon the highways of this State, with the single exception provided in the reciprocity statute, and the fees for property-carrying vehicles such as are involved here, are graduated according to the gross weight of the vehicle and load carried. See § 301.020 and § 301.060 (1955 Supp.). By Article IV, § 30, of the Missouri Constitution of 1945, V.A.M.S., all such fees, after the payment of the costs of collections, go to the maintenance of the Highway Department, the Highway Patrol, and to the road fund for the maintenance and construction of highways. The evidence is that there is no diversion of these funds, but that they, in fact, do go as directed by the Constitution. Furthermore, this

tax is levied upon the owners of all vehicles that operate on the highways of the State of Missouri. No distinction is made between those operated in interstate commerce and those operated in intrastate commerce; both are treated exactly alike.

The registration fees levied under the Missouri statutes are not based upon the miles traveled but are a charge made for the *privilege* of using the highways. Aero Mayflower Transit Co. v. Georgia Public Service Commission, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439; State ex rel. Illinois Greyhound Lines v. Public Service Commission, 341 Mo. 190, 108 S.W.2d 116, 115 A.L.R. 1097. Consequently, unless and until it be shown that the fees exceed fair compensation when the privilege has been fully utilized, the cost per mile actually traveled is of no significance. The burden of making such a showing was clearly upon respondents. Interstate Busses Corporation v. Blodgett, 276 U.S. 245, 48 S. Ct. 230, 72 L. Ed. 551. They failed to do so. Moreover, Riss is engaged in both intrastate and interstate commerce. The validity of Missouri's registration fees as to intrastate operations was not challenged and, since no additional charge was made because of respondents' interstate operations, it is clear that they have failed to make any showing that the fees exacted in Missouri deprive them of any rights under the commerce or equal protection clauses of the Federal Constitution.

Following an extended analysis of the evidence and the law applicable thereto, our Special Commissioner found that respondents were in violation of the laws of Missouri when their vehicles operated over the highways of Missouri without Missouri licenses and with licenses issued by the States of New York, New Jersey, Pennsylvania and Kentucky; that these violations were constant and repeated over a period of almost two years; that they

constituted an abuse of the franchises granted respondents and a violation of the trust imposed in them by the State; and that the State is therefore entitled to judgment revoking the privileges heretofore granted each respondent or the imposition of such penalties as, in the sound discretion of the court, are consistent with the law and the facts. Our independent review of the law and the facts leads inevitably to the same conclusion.

We cannot agree, however, with the recommendation of the Commissioner that ouster should be stayed upon condition of the payment of a fine by each respondent in the sum of $25,000 and the costs of this proceeding. Rather do we agree with the contention of relator that if fines are to be assessed as a condition of stay of ouster the amount thereof suggested by the Commissioner would be grossly inadequate.

The essential portions of the evidence adduced have been set forth at length. The mere recital thereof portends and leads to the conclusions following:

(1) That respondents did not have good reason to believe and did not believe that they were acting in compliance with the registration laws of Missouri in the operation of their motor vehicles licensed in other states upon the highways of Missouri from 1950 until the filing of this action in January, 1956;

(2) That, following their conferences with General Dalton in 1954, respondents did not have good cause to believe and did not believe that the law enforcement officials of this State would accept and agree to registration of their motor vehicles in any manner other than as required by §§ 301.020 and 301.270, as hereinabove construed;

(3) That respondents did not have good reason to believe and did not believe that upon presentation and

hearing of properly joined issues of law and fact (as was done in the instant case), the courts of this State would ultimately construe Missouri's registration statutes in any of the alternative respects contended for by them; and

(4) That the actions brought by respondents for the alleged purpose of procuring an adjudication of the controversy existing between them and the law enforcement officers of Missouri were not motivated in good faith but instead were instituted for the express purpose of delaying such an adjudication, during which they would be enabled (as they thought) to continue unlawful operation of such vehicles with impunity.

The foregoing findings definitely warrant the drastic action of ouster unless we further determine that through means of lesser penalties by way of fines respondents can be saved of ouster and henceforth will not engage in deliberate and studied violation of the laws of Missouri. State on inf. Taylor v. American Insurance Co., 355 Mo. 1053, 200 S.W.2d 1, 42-43 [26] and cases therein cited. The question of whether ouster should be stayed upon condition of payment of fines and, if so, the amount of such fines has been given much thought, both by the Special Commissioner and this Court.

Following the report of the Special Commissioner, respondents, on February 10, 1959, filed in this court their joint motion in which, without admission of liability, they sought to dispose of the case by payment of a total fine of $25,000 and accrued costs. That motion, predicated in part upon respondents' allegedly embarrassed financial condition, further alleged:

> "The evidence as stated in the Report disclosed that immediately upon filing of this information in Quo Warranto, or very shortly thereafter, Respondents

> in the operation and licensing of their motor vehicles complied with the interpretation of the Missouri licensing law adopted and urged by Relator, namely, licensing in the state of incorporation where that State has reciprocity with Missouri."

It further alleged that certain amendments had been made to the registration laws in 1957, and that:

> "Such amendments of the licensing statutes relating to motor vehicles provide for the development through a State Reciprocity Commission of the approximate situation in respect to licensing of motor vehicles engaged in interstate transportation such as those of Respondents as, Respondents contended was appropriate under the Statutes in effect prior to such amendments. Therefore the issues in the present litigation have, insofar as this action being a test case is concerned, become moot in respect to Relator and the State of Missouri."

The motion was denied, but we do construe it, in effect, as a solemn avowal that henceforth respondents will not deliberately violate the motor vehicle registration laws of Missouri. So construing the recitals of that motion, it appears that the ends of justice may be served by the imposition of fines as a condition of stay of ouster.

Both relator and the Special Commissioner have made well considered computations as to the amount of money of which the State was deprived by respondents by virtue of respondents' unlawful operation of their motor vehicles in Missouri in 1954 and 1955. We need not detail those computations; they are not challenged. They show that the revenue of which the State was deprived approximates $250,000 in fines, exclusive of costs, and in excess of $300,000 in loss of motor vehicle registration fees. Of course, any fine imposed as a condition of stay of ouster should not be predicated upon the theory of collection of

the moneys of which the State has been deprived; that is not the office of the writ. However, the extent to which respondents were enriched by their continued and constant violations of the registration laws of Missouri is somewhat indicative of the extent to which they should be penalized. Their ultimate enrichment should not be such as to make their willful misconduct a pleasingly profitable venture; instead, it should be such as is fairly commensurate with the seriousness with which we consider their long continued malfeasance. Our conclusion is that, the fine assessed against each respondent as a condition of stay of ouster should be fixed at $50,000.

It is, therefore, ordered and adjudged that writ of ouster issue as to each respondent, such ouster to be stayed upon condition of the payment of a fine by each respondent in the amount of $50,000 and the costs of these proceedings within thirty days; in default of which, or any part thereof, let the writs of ouster and execution for costs issue.

EAGER, J., not sitting; all others concur and LEEDY, J., concurs in separate opinion.

LEEDY, Judge (concurring).

I concur in the principal opinion except portions of its separately numbered conclusions whereon the Special Commissioner's recommendations as to penalty were rejected. In particular, while I agree to the construction of the registration statutes which the opinion places on them, for me, that question has not been one entirely free from doubt. Nor am I willing to attribute to respondents' counsel improper motives and want of good faith in prosecuting the actions brought by them for the adjudication of the controversies between respondents and licensing authorities. Believing that ouster is warranted irrespective of these considerations, I would defer to the recommenda-

tions of the Special Commissioner as to the amount of fine to be imposed, although I do not dissent to the assessment of the larger amount fixed by the opinion.

On Motion for Rehearing.

PER CURIAM.

Respondents, in their motion for rehearing state:

> "3. The judgment of ouster issued by the Court is repugnant to Article I, Sections 8 and 10 of the Constitution of the United States in that upon its face it is unlimited and thereby purports to suspend an interstate motor carrier's right, as granted by the Interstate Commerce Commission, to operate in interstate commerce within the state. The judgment in this respect is in direct conflict with the decision of the United States Supreme Court in Castle v. Hayes Freight Lines (1954), 384 [348] U.S. 61, 75 S. Ct. 191, 99 L. Ed. 668 [68]."

The Castle case was not referred to in the brief filed by respondents in this court and, therefore, was not discussed in the opinion. It was, however, presented to and considered by the Special Commissioner. He said of it:

> "That case did not involve the revocation of a franchise granted by the state, and the court did not hold that the State of Illinois could not revoke a franchise issued by the state to an interstate motor carrier. Instead, the court held that the state could not suspend the right of an interstate motor carrier to use the highways of the state. The case is not in point."

In the Castle case, the Supreme Court of the United States considered the validity of an Illinois statute providing for suspension of ninety days to one year of the right of interstate motor carriers to the use of Illinois highways as punishment for repeated violations of state high-

way regulations. The statute was held invalid on grounds that the right of the defendant carrier to use Illinois highways for *interstate transportation* of goods cannot be suspended by Illinois.

The Supreme Court of Missouri has long since recognized that the State of Missouri cannot take from any corporation the right to engage in interstate commerce within its borders. In State ex inf. Hadley v. Standard Oil Company, 218 Mo. 1, 116 S.W. 902, 1018 (affirmed 224 U.S. 270, 32 S. Ct. 406, 56 L. Ed. 76), we said:

> "The Legislature has no power or authority to prevent respondents from carrying on interstate trade, for the reason that power is vested in and rests with Congress; but it does possess the power to authorize the courts to forfeit the charters of all corporations organized and existing under the laws of this state for the usurpation of powers not granted to them, or for misuser or nonuser of those granted, and it is wholly immaterial whether those corporations are engaged in interstate commerce or not. The Legislature also possesses the undoubted authority to revoke or forfeit the license issued to any foreign corporation authorizing it to do an intrastate business in this state. The revocation of such a license in no manner interferes with interstate commerce. The authority to conduct such business is obtained under the acts of Congress, and not by virtue of the laws of the state. A license from the state can neither confer nor take away the authority or right of a foreign corporation to carry on interstate commerce; and, that being true, we are unable to see in what possible manner the forfeiture of such a license, that is, a license which only authorizes a foreign corporation to do an intrastate business, can possibly offend against section 8 of article 1 of the federal Constitution, which only applies to interstate commerce."

See also State ex inf. Major v. Arkansas Lumber Company, 260 Mo. 212, 169 S.W. 145, 171.

The information upon which this case was tried does not ask revocation or suspension of the right of respondents to engage in interstate commerce and neither does the judgment purport to do so. To the contrary, the information asks only "that respondents and each of them be ousted from their privilege of exercising their corporate franchise within the State of Missouri, and for such other and further relief as to the Court may seem meet and just in the premises." The opinion rendered by this court, after consideration of the facts, holds that "the State is therefore entitled to judgment revoking the privilege heretofore granted each respondent [by the State of Missouri] or the imposition of such penalties as * * * are consistent with the law and the facts." The judgment rendered by this court recites:

> "Now at this day, comes the informant, the State of Missouri, by the Attorney General, and the respondents, by their attorneys, and the Court having considered the evidence, and the report of the Special Commissioner herein, and being now fully advised of and concerning the premises, and having announced and filed its opinion doth find * * *
>
> "(2) that respondents were in violation of the laws of Missouri in the operation of their motor vehicles over the highways of Missouri without proper Missouri registration licenses; that said violations were constant and repeated over a period of almost two years and constituted an abuse of the franchises granted respondents and a violation of the trust imposed in them by the State.
>
> "It is therefore considered and adjudged by the court that a writ of ouster issue as to each respondent, such ouster to be stayed, upon condition of the pay-

ment of a fine by each respondent in the amount of Fifty Thousand Dollars ($50,000.00) to be paid to the clerk of this court within thirty days from the date of this judgment, * * *," etc.

It is clear, therefore, that the judgment rendered herein, considered in context with the pleadings and the evidence, is not intended to and does not affect any right granted respondents by the Federal Governn ent to engage in interstate commerce or bar them from user of the highways of Missouri in such commerce.

The remaining assignments of the motion for rehearing have also been considered and are found to be without merit.

Rehearing denied.

APPENDIX B.

IN THE
SUPREME COURT OF MISSOURI
EN BANC.

SEPTEMBER SESSION, 1959.

STATE OF MISSOURI, ex inf. JOHN M. DALTON, Attorney General, *Relator,* vs. RISS AND COMPANY, INC., a Corporation, and TRANSPORT MANUFACTURING & EQUIPMENT COMPANY, a Corporation, *Respondents.*	**Quo Warranto No. 45,396**

REPORT OF COMMISSIONER

NATURE OF THE CASE

This is an original proceeding in the nature of Quo Warrranto, filed January 25, 1956 on behalf of the State of Missouri by the Attorney General, seeking ouster of the privilege of respondents in exercising their corporate franchises in the State of Missouri.

PLEADINGS

The information charges the respondents Riss & Company, Inc., a Corporation, and Transport Manufacturing & Equipment Company, a Corporation (referred to herein as "Riss" and "TM&E" respectively) with a common policy and conspiracy to violate the criminal laws of the State of Missouri, the rules and regulations of appropriate governmental agencies, the motor vehicle registration laws of the State of Missouri, and with a willful refusal to pay to the State of Missouri the taxes and fees due from the respondents. It alleges that Riss is a common carrier for hire by motor vehicle, and that TM&E owns and leases to Riss the motive power used in its operations. It further alleges that by the action of respondents, the State of Missouri has been deprived of revenue in an amount exceeding $750,000.00

The joint answer of the respondents denies the major portion of the information; alleges that any violations of equipment regulations have been rare and unintentional; alleges that the licensing charges arise out of a dispute as to the applicability of the reciprocity provisions of the Missouri statutes to respondents' vehicles, and that respondents' construction of the law is in good faith and on the advice of counsel, and further charges:

(1) That the information is so vague and ambiguous that to require respondents to proceed to trial would deprive them of their rights guaranteed by Article I, Sec. 10, Constitution of Missouri and Amendment XIV, Sec. 1 to the Constitution of the United States.

(2) That because of the failure of relator to exhaust the available administrative and legal remedies, the information should be dismissed.

(3) That the construction and interpretation of Sec. 301.270 RSMo 1949, contended for by relator, is violative of Art. I, Sec. 8, and Art. I, Sec. 10, Constitution of the United States.

Thereafter, respondents presented a motion to dismiss the information, and a motion to withdraw their answer and for leave to file a motion for a Bill of Particulars. Voluminous suggestions in support of and in opposition to these motions were filed, but both motions were later withdrawn and are not a part of the record.

After opening statements were made by the parties, each of the respondents filed a motion objecting to the introduction of evidence. At the request of both parties, their briefs on these motions were included in the transcript of these proceedings. No ruling was made on the motions at the time, and it is the recommendation of the Special Commissioner that these motions be now overruled.

At the conclusion of the trial and following the making of oral argument, respondents filed a motion for leave to amend their answer. That motion was granted, and in their amended answer, respondents alleged specifically and with greater particularity that Chapter 301 RSMo 1949, as construed and sought to be applied by relator, is violative of certain provisions of the Constitution of the United States.

HEARINGS AND PROCEDURE

A pre-trial conference was held at Jefferson City, Missouri on May 10, 1956 for the purpose of discussing the issues in the case, possible stipulations of fact, and means of shortening the proof and conducting the hear-

ings. A subsequent conference was held at Springfield, Missouri.

Testimony was heard by the Special Commissioner in Kansas City, Missouri, and Jefferson City, Missouri, at six separate sessions. The hearings began on August 8, 1956 and were concluded on May 22, 1957. There were lengthy adjournments to permit the parties to assemble extensive data presented in the form of exhibits. A total of 722 separate exhibits were introduced in evidence. (Exhibits No. 37 through 406 consist of approximately 30,000 trip manifests, and are now, by stipulation of the parties, in the custody of the Attorney General of the State of Missouri. The information contained in these exhibits has, by extremely diligent effort on the part of counsel for both parties, been collated and is presented in condensed form in other exhibits. All of the remaining exhibits are filed herewith, together with the transcript of the evidence, which contains 1468 pages in nine separate volumes, as reported by Miss Beryl Finley and her assistants.

Extensive briefs were presented by the parties, not only at the conclusion of the hearings, but in connection with many questions arising during the trial. The case was argued orally on January 28, 1958 and final briefs filed on March 28, 1958. The amended answer of respondents was filed on April 3, 1958.

REPORT ON EVIDENCE

By stipulation filed by the parties at the commencement of the hearings, the following facts were agreed upon: Riss, during the period of time involved in this litigation, was a Colorado corporation, and TM&E was an Illinois corporation. (It was shown in evidence that TM&E is now

reincorporated in the State of Delaware.) Both companies are registered in Missouri as foreign corporations. The companies are owned and controlled by Richard R. Riss and members of his family and are operated under such common ownership and control. Both companies maintain their principal, general office and business headquarters in Kansas City, Missouri. (In addition, the evidence showed that all books and corporate records of the two companies were kept at Kansas City, and that Riss had filed a number of suits in Kansas City under a federal statute which provides that the venue shall be in the district where the plaintiff has its residence or principal office.)

Riss is a common carrier by motor vehicle operating under authority of the Interstate Commerce Commission over approximately 36,000 miles of highways in 22 states. The general area of its operations extends from Nebraska, Colorado, Oklahoma and Texas on the west and south, to various points on the east coast. (A map of the Riss system was introduced in evidence as Exhibit 665.) The company maintains offices in 19 states and the District of Columbia, and operates, under lease from TM&E and others, 30 terminals and several garages in various states.

TM&E owns certain terminal properties and other real estate, all of which it leases to Riss. It also owns and leases to Riss, motor vehicle tractors and trailers for use by Riss in its operations as a common carrier.

Prior to 1954, Riss conducted its operations by leasing approximately 800 trailers from TM&E and by leasing tractors and some additional trailers from various individuals who resided in many different states. Generally speaking, these persons continued to operate the vehicles for Riss and are referred to as "owner-operators". Most of the tractor leases were of one year's duration, and the TM&E leases were also long term leases.

In 1954, TM&E disposed of the motor vehicle equipment it then owned and purchased approximately 500 new GMC tractors and 1300 new trailers. These units were all leased to Riss under long term leases, some of the leases giving Riss the right of purchase. Delivery of these units commenced in May, 1954, and from the time the deliveries were completed, Riss has conducted its operations primarily by use of these vehicles, occasionally leasing other units from individual owner-operators to supplement the TM&E fleet. TM&E does not lease to anyone other than Riss, and does not operate any of the units itself.

All of the trailers leased to Riss by TM&E have been licensed in Missouri with the exception of approximately 20 licensed each year in the State of Oklahoma.

It was shown in evidence that TM&E makes no profit under its leases to Riss, and that the purpose of acquiring title to the equipment in the name of TM&E is to avoid certain stringent credit regulations of the Interstate Commerce Commission applicable to common carriers. The evidence further showed that by the terms of the TM&E leases, Riss is required to pay all license fees, maintenance costs, and personal property taxes on the leased equipment, although it did appear that in some instances TM&E itself purchased licenses. The owner-operator leases in use prior to 1954 provided that the leased vehicle should be licensed as required by the state of the owner's residence (Exhibit 679). Those licenses were purchased by the owner of the vehicle and not by Riss.

The evidence also showed that prior to 1954, TM&E owned and leased to Riss a few tractors, in addition to the trailers, and that Riss itself owned a small number of tractors which it operated. All of these company-owned tractors, totaling 45 to 50, were, prior to 1954, licensed in Missouri.

Officials of the State Highway Patrol testified that in the latter part of 1950, their officers began to make arrests of the drivers of Riss vehicles for violations of the registration law, the arrests being made primarily in Phelps and Crawford Counties. The testimony was that these were owner-operated vehicles under lease to Riss. At that time, the Missouri statutes requiring licensing of motor vehicles by the owner, included in the definition of owner any person or corporation owning or having the exclusive use of a motor vehicle under lease for more than ten days. Officials of the patrol testified that they made the arrests on the theory that Riss, by virtue of the location of its home office in Kansas City, was a Missouri resident, and as lessee for over ten days was the owner for licensing purposes and must therefore license in Missouri all vehicles using Missouri highways.

Some of the arrested vehicles had licenses issued to foreign residents by the state of their residence. Others had licenses issued by one state to a resident of another state, including the cases of Missouri residents who obtained licenses in other states. Some operators used foreign "farm" licenses or foreign licenses applicable to weights less than that of the vehicle on which they were used. However, the basic controversy with regard to these arrests was whether Riss as lessee must license, and whether or not Riss was a Missouri resident.

Sgt. Dorsey Arnold estimated that these arrests totaled approximately 150 in the period from 1950 to 1952. He and other patrol officers also testified that during that time the arrests were discussed with various attorneys representing Riss; that at one time they were told by these attorneys that the home office of Riss was in Colorado, but that they were later told that the home office of Riss was in Missouri, and that these attorneys also

stated that Riss was a resident of several states in which they did business. They testified that the attorneys for Riss stated that one of the arrest cases would be appealed, or a declaratory judgment action filed, and a final decision obtained on the question of whether or not Riss was the owner of the leased vehicles for licensing purposes, and whether or not Riss was a Missouri resident, and further testified that they were requested by these attorneys to cease arrests until the matter was tested in the courts.

William C. Dannevik, the Executive Vice-President and General Counsel of Riss, testified that in 1951 a decision was reached to have a test case of one of the arrest charges on an agreed statement of facts, in order to determine these two questions and Sgt. Arnold stated that the patrol stopped arrests for a time awaiting such action. Stipulations of fact were agreed to by the Prosecuting Attorney and counsel for Riss in certain of the cases pending against Riss drivers, and these stipulations filed in the Circuit Court. One of the cases was submitted to the Court on the agreed facts and the remaining cases were held in abeyance. The submitted cases resulted in a conviction and fine under date of October 23, 1951.

On July 29, 1952, the Missouri statute defining owner of a motor vehicle was changed by eliminating from the definition of "owner" of a vehicle a lessee holding under a lease of ten days or more. Riss officials testified that after the change in the statute, they felt that the primary question involved in the driver arrest cases was moot, and they decided not to appeal from the Circuit Court conviction. On November 3, 1953, they paid the fine and at about the same time disposed of the other pending cases in a similar manner. There was never an appeal taken in any of these cases, and the fines were paid by Riss.

The evidence showed that following the change in the licensing statute in July, 1952, arrests of Riss vehicles fell off sharply, and that there were very few arrests for improper licensing from that date until the middle part of 1954. However, Major Edward Hockaday of the Highway Patrol testified that in 1953 he had a conference in patrol headquarters with James T. Blair, an attorney for Riss, and that there was a general discussion of licensing in Missouri and the Riss operation. He contended that Riss should not be operating tractors with foreign licenses, and Blair contended that Riss was correct in its licensing. It was decided that Riss would file a declaratory judgment action in order, as stated by Blair, to clarify the law. Hockaday said that because of this understanding, the patrol for a time let up on arrests of Riss vehicles for licensing violations. There is some indication that Major Hockaday may have been in error as to the date of this conference, but there is no dispute that the conference did take place.

In 1954, after Riss placed in operation the new tractors and trailers purchased by TM&E and leased to Riss, the Highway Patrol again commenced making arrests of Riss vehicles bearing foreign licenses. The evidence showed that both prior to and after the acquisition of these new vehicles, there was a series of conferences between State officials and Riss representatives regarding the licensing of these vehicles.

Mr. Dannevik testified that prior to the delivery of the new vehicles, he called upon Hugh Waggoner, Superintendent of the Missouri State Highway Patrol, and Robert L. Hyder, Chief Counsel for the Missouri State Highway Commission, for the purpose of discussing his licensing problems. He said that at this conference he proposed to license Riss vehicles on a mileage proration basis,

registering in Missouri the percentage of vehicles that miles traveled in Missouri bore to total system miles. He denied that he predicated his proposal upon an agreement to cease arrests, although he said that previous arrests were discussed. He said that Hyder told him he would consider the proposal, but later advised him that under Missouri law there could be no agreement to a distribution of licenses on a mileage basis.

Mr. Hyder testified that James T. Blair, an attorney for Riss, was also present at this conference with Dannevik, and that Dannevik and Blair proposed to license 75 tractors in Missouri if Hyder would agree not to prosecute Riss for licensing violations. He understood them to mean they would license 75 tractors in addition to those already licensed. He said that Blair and Dannevik also told him that Riss might withdraw all licenses from Missouri if the proposition was not accepted. With reference to another conference, Hyder stated that Blair requested the patrol to stop arrests until a test case in the form of a declaratory judgment action could be filed by Riss. Hyder agreed to confer with Blair and try to work out a stipulation of facts for such a suit, but did not agree to stop arrests. He said that nothing was ever done about working out a stipulation of facts, and that the next he heard was that an injunction suit had been filed by Riss to enjoin arrests. He also said that there was no mention made of an injunction in connection with the discussion of a test case.

Col. Waggoner had several conferences with Dannevik and Blair. He testified that Dannevik proposed that Riss be permitted to license its vehicles on a mileage proration basis, and that there be no further arrests. He said he told Dannevik that under an opinion of the Attorney General, he had no authority to make any agreement permitting

licensing on a pro-rata basis, and that Riss must license in Missouri all its vehicles operating on Missouri highways. He also stated that Dannevik did not request a copy of the opinion.

With regard to these conferences, Governor Blair testified that he and Dannevik proposed to license on a mileage basis, or a basing point system, and offered to license a substantially larger number of vehicles than the Riss operation represented in Missouri if they would leave Riss alone until the matter was settled, but that Hyder turned the proposal down. He denied that he proposed a test case, and said that this proposal came from Major Heckaday.

Sgt. Arnold and Mr. Jay White, Prosecuting Attorney of Phelps County, testified that in 1954 and later in 1955, the attorneys representing Riss agreed to take an appeal from one of the arrest cases then pending. Mr. White and the Riss attorneys agreed to a stipulation of facts which was filed in one of the cases late in 1954, and White continued the other cases on the strength of the agreement to appeal if the result was adverse to Riss. A conviction did result in that case, but no appeal was taken. Convictions were later obtained in the other cases, but no appeal was taken in any of them and the fines were paid by Riss.

Governor Blair testified that he advised Riss against an appeal because in his opinion it would not afford a proper test of the matters that were in controversy, and Mr. Dannevik said that Riss decided not to and did not appeal these convictions, because they felt that a decision in an individual case, involving a license from one state only, would not solve the whole problem. Instead, Riss decided to file an injunction suit against the Highway Patrol to enjoin further arrests. Such action was filed in the Circuit Court of Cole County on August 7, 1954. In the absence of the Circuit Judge, a temporary restraining order was is-

sued by the Magistrate Judge. The temporary injunction was dissolved by order of the Circuit Judge of Cole County on August 12, 1954, and on August 19, 1954, the petition was dismissed by the court because of failure to state facts sufficient to warrant injunctive relief.

On November 1, 1954, Riss filed a suit for injunction and declaratory judgment in the Circuit Court of Jackson County, and a temporary order was entered on November 3, 1954, restraining the Highway Patrol from arresting Riss drivers operating vehicles leased from TM&E and others, and bearing license plates of the states in which they were domiciled. This petition and order were attacked by counsel for the Highway Patrol and the other defendants because of lack of jurisdiction in the Jackson County Circuit Court, and on September 12, 1955, that court was, by order of the Supreme Court of Missouri, prohibited from proceeding further. During that period from November 3, 1954 until September 12, 1955, while the injunction was in effect, Riss operated free from arrest on licensing charges.

On July 11, 1955, while the Jackson County case was pending in the Supreme Court, Riss filed in the Circuit Court of Cole County, a suit identical to that pending in Jackson County. Dannevik explained this suit by stating that he began to doubt that the action in Jackson County could be maintained, and the case in Cole County was filed in order to be sure there would be no lapse in the restraining order if the decision of the Supreme Court should be adverse to Riss. This last case in Cole County was later dismissed for failure to plead over after a decision by the court that no cause of action was stated. The dismissal order was entered on January 20, 1956 and Riss appealed from that order on January 30, 1956, following the filing of this quo warranto action on January 25, 1956.

Attorney General John M. Dalton, testified that these suits were all attacked by the state for the reason that they did not present sufficient facts to properly determine the issue, and that he so advised Mr. Robert Riss, the President of Riss & Co.

The evidence showed that on October 27, 1954, after the first injunction in Cole County was dissolved, General Dalton received a letter from Robert Riss asking for a conference. This conference was set for November 8, 1954. Between those dates, the suit in Kansas City was filed, and the temporary restraining order issued, the date of that order being November 3, 1954. General Dalton considered this a badge of bad faith.

General Dalton testified that shortly before the conference, Mr. John Gage called him by telephone and told him that the Riss people were thoroughly honorable and reliable. Dalton testified that, at the time of the call, he treated it as a courtesy call. Mr. Gage denied ever making the call and said that he was not an attorney for Riss in connection with the licensing problems at the time of the alleged call.

At the conference on November 8, 1954, Mr. Dannevik and Mr. Robert Riss represented Riss & Co. and General Dalton and Will F. Berry, his assistant, represented the state. Dalton testified that toward the end of the conference Mr. Riss stated that several of Dalton's friends would see him and tell him what type of people the Riss people were. Dalton said he then told Mr. Riss not to send any politicians to see him, but to bring the law, and if they were right he would agree with them, but if not, he would expect Riss to pay the taxes and licenses due the State of Missouri.

Dannevik testified that General Dalton opened the conference with a statement to him not to send any pol-

iticians to Dalton's office, that he would talk to them on the basis of the law, but would not be influenced by politicians. He said the conference then continued and they discussed the licensing problems of Riss, and Mr. Riss requested an interpretation of the law by Dalton, but that Dalton said he could not give private citizens an interpretation of the law.

In his testimony, Robert Riss denied that he told Dalton that several of Dalton's friends would call upon him in behalf of Riss. He said that after they had discussed the licensing problems and Dalton had refused to give an interpretation of the law and had suggested that the remedy for Riss was in the Courts, Dalton then turned to Dannevik and in an irrational manner said not to send any politicians to see him.

Mr. Will Berry testified that the statement by Dalton regarding politicians came at the outset of the conference and that Dalton then invited them all to have a coke and the conference started. He later stated that some remark was made at the conference by Mr. Riss to the effect that friends of Dalton would see him and tell him what type of people the Riss people were, and he further testified that he was not certain which statement was first in point of time.

General Dalton testified that on January 5, 1955, Senator Charles L. Madison, a member of the State Senate from Kansas City, called on him in connection with the Riss licensing problems and told him that if Dalton would leave the Riss company alone, they would license 200 tractors in Missouri. Dalton said that he replied that he had no authority to and would not compromise.

Dannevik and Robert Riss denied any knowledge of Senator Madison's visit to Dalton, and denied having ever

talked to him about their licensing problems. Richard R. Riss, the former president and principal owner of Riss & Co., testified that he knew Madison casually and had met him one time at a club in Kansas City. He said that he jokingly mentioned that Riss was having licensing trouble with the State of Missouri, but denied that he authorized Madison to see Dalton on behalf of Riss, or to offer to license 200 tractors.

Senator Charles Madison testified that he did call upon General Dalton, but that he thought the date was March or April of 1955. He told Dalton that he appeared on behalf of a constitutent and did not represent Riss as a lawyer. He said that he had a chance meeting with Mr. Riss in Kansas City and that Mr. Riss asked him to see Dalton on behalf of Riss & Co. and told him that Riss & Co. would license 200 vehicles in Missouri. Madison said that in his conference with Dalton he conveyed this information, but did not report back to anyone in the Riss organization. At the time of the conference, he was a member of the State Senate, which was then in session, and he would vote upon the appropriation for the Attorney General's office.

With regard to the actual licensing of vehicles, the evidence showed that prior to 1954, all tractors owned by TM&E or Riss, and operated by Riss, were stationed at Kansas City, Missouri, and were all licensed in Missouri. These tractors were used largely in intrastate commerce in Missouri.

A record of the licensing of Riss operated vehicles between February 1, 1954 and February 15, 1954, is shown by Exhibit 543 and is analyzed by relators Exhibit 544. These vehicles were largely owner-operated and were under lease to Riss. The residence of the owners is not shown, but an address is listed. In 16 separate instances,

the listed address of the owner is different from the state of registration of the vehicle. Mr. Dannevik testified that in 4 of these instances the listed address was not the true residence of the owner of the vehicle and that such owner in fact resided in the state in which he obtained his license.

The controversy between respondents and officials of the State of Missouri over the registration of company-owned vehicles subsequent to mid-1954 was brought about by the policy and practice of Riss in traveling the highways of Missouri in interstate commerce with tractors licensed in various foreign states, and a great many arrests resulted. When these tractors were acquired in 1954, they were licensed as follows (Exhibits 5, 5A, 542):

New York	298
Oklahoma	56
Kentucky	41
Missouri	96

In the first part of 1955 the licensing schedule showed the following registration (Exhibits 6, 6A, 542):

New York	280
Oklahoma	28
New Jersey	28
Missouri	106

As these New York licenses expired in the Spring of 1955, they were transferred to Pennsylvania. Dannevik testified that this was due to his fear that reciprocity with New York would be cancelled.

In 1956 the registration list showed (Exhibits 7, 7A, 542):

Pennsylvania	279
New Jersey	46
Oklahoma	12
Missouri	156

In April or May of 1956, TM&E was reincorporated in the State of Delaware and all Pennsylvania licenses were then transferred to Delaware, the stated purpose being to register the vehicles in the state of incorporation so that Missouri would afford reciprocity to the vehicles. Thereafter, all tractors have been licensed in Delaware.

As stated in the stipulation filed by the parties, the trailers owned by TM&E and leased to Riss were all licensed in Missouri during this entire period, with the exception of a very few licensed in Oklahoma. Since the incorporation of TM&E in Delaware in 1956, all trailers have also been licensed in Delaware.

Officers of Riss testified that all trailers were licensed in Missouri because it has been much easier to go to Jefferson City and get it all taken care of at once. They said the trailers flow freely throughout the system, are not restricted to designated runs, and it is not realistic to attempt to determine a domicile or location for the trailers. They testified that the low cost of trailer licenses in Missouri did not influence their decision to license in this state. They also said that they had never had any trouble with other states over Missouri licenses on trailers. There was no direct evidence regarding difficulty by Riss in other states with tractors licensed in Missouri.

There was some evidence to the effect that in 1954 the tractors licensed in Oklahoma had only 15,000 pound licenses, but were used to pull Missouri licensed trailers carrying 50,000 to 60,000 pounds.

The evidence showed that none of the company-owned tractors operated by Riss were ever domiciled in New York, New Jersey, Pennsylvania or Delaware. Practically all of the tractors were domiciled in the western part of the Riss system and none of them were ever domiciled east of the Cleveland, Cincinnati & Louisville area. Some were domiciled in Ohio, Illinois, Michigan, Nebraska, Kansas, Colorado and Texas, but the company did not buy licenses in any of these states. Robert Riss testified that the domicile of a tractor refers to the domicile of the driver of the vehicle and that tractors are located at that point principally to avoid payment of lay-over time under union contracts.

With regard to the purchase of New York licenses, where no tractors were based or domiciled, Robert Riss testified that New York accounts for nearly 20 per cent of the revenue of the company; that the revenue of that station has been steadily increasing, and that licenses were purchased in New York for that reason. He said there was no change in the utilization of the equipment when the registrations were shifted from New York to Pennsylvania. He further said that the East coast is by far the greater producer of traffic for the company.

The evidence showed that subsequent to July 29, 1952, the cost of tractor licenses in Missouri for the Riss vehicles was $600.00; that the cost in New York was about $200.00; in Pennsylvania, approximately $300.00; in Delaware $250.00 to $350.00, and that in Oklahoma the cost is $120.00, with the largest licensing charge in that state being on the trailer. The cost of licenses in Illinois, the state of incorporation of Riss, was not shown, but it was stated by Dannevik that Illinois licenses were not purchased because they were too high.

A record of the arrest of Riss vehicles during the years 1953, 1954, 1955 and January, 1956, is set forth in relators Exhibit 32. In explanation of those arrests shown for "improper licenses", Col. Waggoner testified that this might include a foreign license, a license not issued to that vehicle, or an expired license.

In addition to the arrest record, relator introduced in evidence (Exhibits 31, 31A) a copy of a special check of Riss vehicles crossing the patrol weight stations from 8:00 a.m., March 16, 1955, to 12:00 midnight, March 19, 1955, this check being made during the time the injunction against arrests was in effect. These exhibits show that out of 165 Riss tractors crossing the scales in the four day period, 92 had foreign licenses. They also show that of the 430 trips checked, a total of 205 were made by vehicles bearing foreign licenses.

Relators introduced in evidence copies of 25,000 to 30,000 manifests showing trips by company-owned Riss vehicles on Missouri highways in 1954 and 1955 designated as "across state", that is, trips other than those originating in Kansas City or St. Louis and moving directly out of the state. These trips include both interstate and intrastate vehicle movements. These manifests are grouped in relators Exhibits 37 through 406. The data shown on the manifests has been analyzed and relators Exhibits 533 and 534 give a condensed analysis of the information shown on all of the manifests. These exhibits show that in 1954 Riss vehicles made 3475 across state trips with foreign licenses and in 1955 made 8325 such trips with foreign licenses. The 1954 figure is corrected by respondents Exhibits 686 and 689 to show only 3189 across state trips with foreign licenses, and the 1955 total is corrected by Exhibit 690 to show 7785 such trips. These totals exclude trips moving directly into Kansas City and St. Louis from out

of the state, and directly into and out of Skyline and Valley Park.

Relators Exhibits 407 through 410 are a record of manifests showing trips in 1954 and 1955 of Riss vehicles originating in Kansas City or St. Louis and moving directly out of the state. These trips are referred to as "out of state" movements. (Relators Exhibit 532A gives a definition of the terms "across state" and "out of state" as used in the various exhibits). Again these exhibits have been analyzed and relators Exhibits 535 and 536 show that Riss vehicles with foreign licenses made 1389 out of state trips in 1954, and made 5190 such trips with foreign licenses in 1955. Minor corrections of the 1954 trips are noted on respondents Exhibit 688.

Relators Exhibits 537, 538, 540 and 541 contain the same information as Exhibits 533 through 536, but with the information broken down and analyzed in a different manner, and relators Exhibit 539 is a recapitulation of all the other exhibits in combined form. In none of these exhibits has there been any attempt to differentiate between interstate and intrastate vehicle movements.

Relators Exhibits 19 through 28 and 546 through 661 are copies of selected Riss manifests showing special instructions to drivers. These manifests related to trips from Dallas, Texas or Oklahoma City, Oklahoma, to St. Louis, Missouri or some eastern point, or the reverse of those trips. The instructions on these manifests in general directed the driver of the truck to proceed via Highway 40 to Kansas City if the truck did not have a Missouri license. Some of the manifests directed the driver to use Highway 66 if the truck had Missouri or New Jersey licenses, otherwise to go through Kansas City on Highway 40. A few had instructions to by-pass Missouri scales or to go through when the scales were closed. It was shown

in evidence that most of the arrests in Missouri were made at the Highway Patrol scales, and that the arrests were made principally on Highway 66 and not on Highway 40. These exhibits are listed chronologically in relators Exhibit 545, and the state licenses on each of the tractors involved in the trips is shown in respondents Exhibit 700. Several of the tractors had Missouri licenses, but the evidence showed that very often the manifest would be made up before the dispatcher knew what tractor would pull the load.

The only evidence offered by relator as to violations of the criminal laws of Missouri is the record of arrests shown in Exhibit 32. With regard to the overweight charges there listed, it was shown that except for those marked "gross", which involved excessive total weight, the overweight charges referred to axle weights. There was also evidence to the effect that an overload on the axle may be caused by sudden slowing or stopping of the truck, resulting in a shifting of the load. It was also admitted by relators witnesses that in some instances the scales may not weigh properly.

Relators evidence as to violation of Public Service Commission regulations is likewise confined to Exhibit 32. The arrest charges are there noted as "P.S.C. equipment regulations". The nature of the violations is not stated, but it was shown that the charge could be based upon failure to have an amber light on the vehicle, which may have gone out while the vehicle was in transit.

With reference to the non-payment of personal property taxes due the State of Missouri, relators introduced a series of Exhibits numbered 411 through 532. These exhibits are copies of tax statements, tax returns, or tax receipts issued in various states by different taxing authorities. Except in a very few instances, the exhibits do not

describe the property being taxed, and many do not reflect the basis for the assessment. These exhibits constitute the sole proof regarding the non-payment of personal property taxes, except for the admission by respondents that it was possible for any of their vehicles to escape taxation in any given year.

In support of their assertion that their licensing policy has been in good faith, certain officers of the respondent companies testified that an executive committee was created within the Riss organization, and given the responsibility of determining where the vehicles should be licensed. Mr. Robert Riss, President of Riss & Co. and a member of that committee, testified that reciprocity statutes are very complex and that the committee referred the question to the Riss legal department and made its decisions upon the advice of its legal counsel. Governor Blair testified at length regarding his personal views of the registration laws, and particularly the reciprocity statutes, but there is no evidence that he advised Riss in accordance with the views he expressed at the trial. Mr. Dannevik also expressed his opinions on the subject and both he and Governor Blair stated that the Missouri statutes are broad enough to authorize pro-rata registration, or, in any event, that this has been the practice in Missouri.

Dannevik testified further that in 1954, after a general study of the licensing problem, he concluded that it was necessary that the vehicles be licensed in states to which other states would grant reciprocity, and that as initially licensed Riss should have no difficulty over the entire system. He stated that he conferred with Missouri officials before making his conclusions, and after those conferences were concluded he had some doubt that Missouri would recognize the registrations he planned to make. However, he felt that under a reasonable interpretation

of the law, they should be recognized. At another point, he testified that he was not at all sure he was right in his first registrations in 1954, and therefore purchased part-year tags whenever possible.

Dannevik and Robert Riss also testified that they in good faith endeavored to obtain a legal determination in the courts of the questions involved, but that the officials of the State of Missouri blocked those efforts.

Respondents offered extensive testimony to show that the licensing and reciprocity statutes are confusing, not only to them, but to the enforcement officials of the State of Missouri. They have emphasized throughout these proceedings the inconsistent views of the licensing laws as expressed by various representatives of the state. In this regard, the evidence showed that when Dannevik conferred with Col. Waggoner in 1954, prior to the acquisition of the new tractors, Waggoner stated that all Riss vehicles operated on Missouri highways would be required to have Missouri licenses and that arrests would be made for violations.

Waggoner admitted that at this conference he stated that since Riss maintained its general or principal offices in Missouri, the patrol considered the company to be a Missouri resident and would require Missouri licenses on all vehicles using the highways, regardless of reciprocity agreements with any state in which Riss considered itself to be a resident.

Waggoner testified that at a later conference with Dannevik, in which Dannevik requested that Riss be permitted to license on a pro-rata basis and that arrests be stopped, he refused to agree and told Dannevik that under an opinion of the Attorney General he had no authority to make such an agreement, and that according to the opin-

ion all Riss trucks operating in Missouri must bear Missouri licenses.

At the trial, when asked to state the basis of the arrests by the patrol for foreign licenses, Waggoner said that they arrested Missouri residents who purchased foreign licenses, and that if a company had its general offices and headquarters in Missouri, it was considered to be a Missouri resident. Although his testimony is not entirely clear, he did say that the state of incorporation would have some bearing, and that they would consider reciprocity, but his evidence indicates that, in his view, a company was in violation of the registration laws if it had its general offices and base of operations in Missouri and did not purchase Missouri licenses, his theory being that it was a Missouri resident. He again stated that he told Dannevik that all of his views were based on the Attorney General's opinion. He admitted that he found reciprocity to be a very complex field, and that a test case would be helpful.

Major Edward Hockaday, Assistant Superintendent of the Highway Patrol, testified that he was present at the conferences between Dannevik and Waggoner, and that at that time Waggoner told Dannevik that a pro-rata licensing proposal could not be approved, but that if Riss was required to license any of its vehicles in Missouri it should license all of them that traveled the highways of the state. He further testified that since the home office of Riss was in Missouri, the patrol felt they should license in Missouri, but there is no evidence that he made this statement to Dannevik, or to any other representative of the respondents.

Capt. Thomas Whitecotton, another officer of the Highway Patrol, testified that early in 1955, following his return to the patrol from a leave of absence, he

learned of the Attorney General's opinion in the Frisco case (Exhibit 34). He said it then became clear in his mind that the state of incorporation was the determining factor in licensing problems, and that Missouri would recognize licenses issued by the state of incorporation if that state had reciprocity with the state of Missouri. He said that neither the location of the home office of the company nor the domicile of the equipment were of any importance with regard to licensing requirements. Again, however, there is no evidence that the officials of Riss ever conferred with Capt. Whitecotton, so that the record does not reflect whether or not these views were ever stated to Riss.

Sgt. Arnold, the assistant to Capt. Whitecotton, testified that he told Dannevik that all Riss vehicles moving over the Missouri highways must bear Missouri licenses, for the reason that Riss was a Missouri Company. He said this conference was in 1954, and must have been prior to October 4, 1954, which was the date of the Frisco opinion; and that when the Frisco opinion came out he learned that he had been in error in his belief that Riss was a Missouri resident.

Mr. Robert L. Hyder, Chief Counsel of the State Highway Commission, testified that he had regarded a test case as being desirable, and that he was willing to go along if Riss wanted a test case. It was his opinion that Riss was a resident either of Missouri or Colorado and since Missouri did not have reciprocity with Colorado, Riss should license in Missouri in either event. He said he formed this opinion sometime prior to October, 1954, and thought the law was clear. Again the record does not disclose whether or not this view of the law was discussed with the officials of Riss, or whether the basis for Hyder's opinion was requested by them.

From the testimony of Attorney General John M. Dalton, it appears that in his conference with Dannevik and Robert Riss, he clearly stated his position that the mileage traveled by trucks made no difference in considering the licensing requirements. He was not sure that the Frisco opinion was discussed at the conference, but was certain that the point involved in that opinion and the reasoning found in it were discussed.

Following his conferences with the various Missouri State Officials, Dannevik reported to the other officers of Riss that it was doubtful that Missouri would recognize a pro-rata system of licensing.

In connection with their assertion that the state officials have been inconsistent, respondents have stated that the two opinions of the Attorney General (Exhibits 34, 36) are confusing and contradictory and prevented Riss from determining the licensing policy of the state. The M.F.A. Oil Company opinion, dated March 12, 1954, (Exhibit 36), held that a Missouri corporation authorized to do business in Tennessee must license in Missouri a truck based in Tennessee and crossing Missouri on trips from Tennessee to Kansas. The opinion stated that a corporation is a resident of the state which creates it, and that as a Missouri resident, the M.F.A. Company was not entitled to reciprocity.

The opinion in the Frisco case (Exhibit 34), dated October 4, 1954, holds that a Delaware corporation cannot operate, on Missouri highways, a truck licensed in the State of Oklahoma. The theory of this opinion was that a corporation is a resident of the state of incorporation and must license in that state in order to be entitled to reciprocity in Missouri.

Respondents have also suggested that the practice of the Missouri Public Service Commission, in recognizing

principal offices of carriers in various states and reaching reciprocal agreements with those states, was relied upon by respondents and demonstrated their good faith in the manner of licensing their vehicles.

Richard R. Riss testified that at one time Riss & Co. had an agreement with the State of Missouri and the State of Illinois providing for an equal division between those states of license plates on Riss vehicles traveling between Kansas City and Chicago, and had a separate agreement of a similar nature with Missouri and Oklahoma. He was unable to give the name of the person with whom he made the agreements, but stated that they were taken up through the Public Service Commission. He knew of no such agreement being entered into since January 1, 1950. At one point, he indicated that the agreements he made were in the late 1940's and later said that they were in 1937 or 1938. He said that he did not know whether or not he relied on legal advice in making these agreements.

Governor Blair testified that a basing point and prorata system of licensing has been in effect in Missouri for many years "without benefit of statute" and that reciprocal agreements have been made which include both registration and Public Service Commission permits. He did not mention any specific agreements concerning Riss, and said that any agreements made would be in writing. He admitted that the agreements had nothing to do with registration of vehicles under the present law, and his testimony indicates that those agreements concerned registration fees as formerly collected by the Public Service Commission under a statute then in effect. None of the written agreements he referred to were introduced in evidence.

Dannevik at one point mentioned that a mileage proration system had been in use in Missouri for many years, and that he believed the reciprocity statutes of Missouri to be broad enough to authorize an agreement for prorata licensing.

The deposition of John Randolph, former General Counsel for the Missouri Public Service Commission and later a member of that Commission, was introduced in evidence. He testified that certain agreements were made with Riss through conferences with Richard Riss and James T. Blair. Although he stated that these agreements involved both registration and P.S.C. permits, he admitted that neither he nor the Public Service Commission had any authority to make reciprocity agreements regarding registration, and later stated positively that the only agreements he made involved P.S.C. permits, and those alone. He did say, however, that he conferred with the Commissioner of Motor Vehicles at the time the agreements were made, so that "it would all be in agreement"; that the Commissioner at times participated in the conferences, and that the purpose was to work out a uniform licensing. He said that the Highway Patrol was also advised of all such agreements. He testified that he knew of no agreement between Riss and the State of Missouri to the effect that licenses on Riss vehicles traveling from Kansas City to Chicago would be divided equally between Missouri and Illinois.

He also testified that the Commission recognized principal offices in other states and granted reciprocity to companies such as Riss, for vehicles fully licensed in states where a principal office was located. By "fully licensed" he said he meant P.S.C. licenses and also registration. Copies of such orders are sent to the Highway Patrol.

Respondents offered in evidence a series of exhibits (Exhibit 693 through 697) showing the state of incorpora-

tion and scope of business operations of several other carriers; the licenses on the vehicles as revealed by the annual pit scale checks, and the number of arrests of those vehicles by Missouri authorities. These exhibits showed that in the case of three foreign corporations a number of the trucks checked bore foreign licenses issued by states other than the state of incorporation, and that in the case of three Missouri corporations, some of the tractor licenses were issued by foreign states. There were only a very few arrests for improper licenses in the case of any of these companies.

One of the Missouri companies referred to was Southwest Freight Lines, Inc. The evidence showed that in 1955, the Highway Patrol recognized foreign licenses purchased by that company. Capt. Whitecotton testified that this was due to the fact that Iowa and Oklahoma had forced the company to register some of its vehicles in those states, and since the Riss litigation was then pending, he agreed to recognize those licenses for the balance of 1955, but required that all units be licensed in Missouri in 1956.

Respondents also introduced in evidence a copy of an eleven state reciprocal agreement setting out the basis upon which the states involved have agreed to recognize registration of interstate motor vehicles (Exhibit 701). This agreement, by its terms, permits an owner to license a vehicle in any of the states party to the agreement in which a principal place of business is maintained. If there is more than one principal place of business the vehicle may be licensed where it is based, if a principal office is maintained in that state.

Respondents offered in evidence copies of bulletins issued by the Riss home office to their terminal managers, one bulletin setting forth motor vehicle regulations of various states and directing that all reciprocity regulations of

those states be met before signing up extra drivers (Exhibit 680); and another advising of rigorous enforcement of public utilities commission laws in Ohio during a specified period and directing compliance with those laws (Exhibit 682). It was shown that these bulletins were distributed to all terminal managers and dispatchers.

Respondents offered in evidence Exhibit 683 showing that in 1955 the total system miles traveled by Riss equipment was 54,735,470, and that the total Missouri miles traveled was 4,942,250. According to respondents computations, the Missouri miles traveled were 9.02% of the total miles and they computed 9.02% of the total number of Riss vehicles to be 44.

They also showed by Exhibit 691 that in 1955, 101 of their tractors were out of the State of Missouri for a period of 90 consecutive days or more, some of them on more than one occasion, the exhibit showing a total of 122 such occasions.

By Exhibit 692, respondents demonstrated that in 1955, out of a total of 90,303 trips by Riss tractors, only 26,791 trips touched the State of Missouri.

Reciprocity schedules as published by the American Trucking Association, showing a condensation of the Missouri reciprocity laws, were introduced in evidence by respondents as Exhibit 684, published in 1953, and Exhibit 685, published in 1954. Exhibit 663 is the reciprocity schedule published by the Highway Patrol.

Several examples of Riss truck movements throughout a given year were testified to by respondents witnesses, the stated purpose being to show that the governing factor in the utilization of motor vehicle equipment is the flow of traffic. The cited examples showed that the trucks mentioned made trips between two points for part of the year,

and were re-assigned one or more times during the year to different runs. Some of the units would touch Missouri only one time during the year. Respondents witnesses also testified that during the time Riss was hauling explosives for the U. S. Government, they very often pulled tractors off of assigned runs and used them in the government division in order to meet committments to the government. They further testified that often a vehicle might be in use on a certain run that would not touch Missouri, but that when the driver was ready to make the return trip from the east there would be no load for the place of his domicile. To avoid lay-over time, the vehicle might be sent into Missouri with a load and then on to the place of domicile.

In support of their assertion that the motor vehicle licensing law as construed by relator is unconstitutional as an undue burden on interstate commerce, respondents offered extensive testimony in the form of exhibits and oral evidence. This evidence consisted of proof of the cost per mile to Riss for its operations over certain toll roads in different states (Exhibit 697); the maintenance and operational costs of some of the toll roads (Exhibits 670 to 678); the construction costs and repair and maintenance expense of certain Missouri Highways (Exhibits 703, 704); the miles traveled by Riss trucks in Missouri, and the amount of payments made by Riss to the State of Missouri. By a series of intricate calculations, respondents concluded that this proof establishes that, under relators theory, respondents would pay the State of Missouri more revenue in highway taxes per mile than the cost to the state of maintaining and operating its highways.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As will be noted from the foregoing report on the evidence, there is very little actual conflict in the testimony with regard to important factual issues. The parties center their dispute on the question of the legal effect of the facts as developed and the meaning and interpretation to be given to the motor vehicle registration law of Missouri. The few instances in which conflict appears in the evidence will, when considered material, be subsequently discussed. Otherwise, the report on the evidence as above set forth is submitted as the findings of fact.

At the very outset of this litigation, the respondents challenged the right of relator to proceed against them by quo warranto, for the asserted reason that relator had failed to pursue adequate administrative remedies which were available to relator in the form of complaints before the Public Service Commission of Missouri or the Interstate Commerce Commission of the United States. That such remedies had not been undertaken was admitted by relator.

In argument, respondents state that to deprive Riss of its authority to do business in Missouri is to deprive it of its authority to operate as a motor carrier in interstate commerce within the State of Missouri. They say that this court is lacking in jurisdiction to deprive Riss of that authority because of the exclusive supervisory control of the Interstate Commerce Commission.

Respondents' argument is not well founded for the reason that the revocation of the franchise(s) granted to them by the State of Missouri could not and would not prevent them from continuing to operate in interstate commerce within the State of Missouri. The law is well settled that in order for a foreign corporation to carry on purely in-

terstate business in Missouri, no license or franchise from the State of Missouri is necessary. *Superior Concrete Accessories* v. *Kemper*, Mo. Sup. 284 S.W.2d 482; *International Text-Book Co.* v *Gillespie*, 229 Mo. 397, 129 S.W. 922. The State of Missouri cannot, by franchise or in any other manner, confer upon any corporation the right to engage in interstate commerce. The power to confer that privilege rests solely with the federal government. *State ex inf. Hadley, Atty. Gen.* v. *Standard Oil Company*, 218 Mo. 1, 116 S.W. 902, 1018. If a franchise issued by the State of Missouri to a corporation cannot grant the right to engage in interstate commerce, then certainly the revocation of the franchise does not take away that privilege.

When Riss obtained a franchise in Missouri as a foreign corporation, it received only the right to transact business within the boundaries of the State of Missouri. The franchise granted no power respecting interstate commerce that Riss did not already have. If its franchise is revoked, the only rights terminated will be those initially granted and they do not include any authority affecting interstate commerce. Certainly, if this state had the authority to grant to Riss a license permitting it to do business in Missouri, then it has the right to withdraw the privilege if it has been abused.

Respondents have cited and relied upon the case of *Castle, Attorney General of the State of Illinois* v. *Hayes Freight Lines*, 348 U.S. 61, 99 L. Ed. 68. That case did not involve the revocation of a franchise granted by the state, and the court did not hold that the State of Illinois could not revoke a franchise issued by the state to an interstate motor carrier. Instead, the court held that the state could not suspend the right of an interstate motor carrier to use the highways of the state. The case is not in point.

Respondents further contend that exclusive jurisdiction to terminate the intrastate operations of Riss lies in the Missouri Public Service Commission and for that reason this action may not be maintained.

It may be conceded, of course, that the Public Service Commission has jurisdiction over operating permits issued by the Commission, but the Commission is an administrative body and not a court. Its jurisdiction is strictly limited to those powers conferred upon it by statute and those additional powers reasonably incidental thereto. *State ex rel. Kansas City Power and Light Company v. Buzard*, 350 Mo. 763, 168 S.W.2d 1044.

Respondents do not suggest that the Public Service Commission has the power to revoke a franchise granted by the state to a foreign corporation, even a motor carrier. That power is a judicial function and the only agency of the state having such authority is the judiciary. Therefore, if jurisdiction of the courts to revoke a franchise granted to a common carrier holding a certificate issued by the Public Service Commission is denied, then the state has lost all control over the franchise. That the state does have the right to revoke the privilege of a foreign corporation, which has abused or misused its franchise, is too well settled to need citation of authority. This point, therefore, must be ruled against respondents.

Having concluded that this court does have jurisdiction to grant relief in this proceeding, we now consider the evidence presented by relator to sustain the charges contained in the information. The evidence falls into 4 separate catagories:

(1) Non-payment of personal property taxes.

(2) Violation of Public Service Commission regulations.

(3) Violation of laws relating to the operation of commercial motor vehicles.

(4) Violation of motor vehicle registration laws.

On the question of personal property tax evasion, relator has presented no proof of the amount or character of personal property owned by respondents that would be subject to taxation in Missouri in any given year, and there is no direct tangible evidence that Riss or TM&E evaded the payment of any taxes on personal property due the State of Missouri. The fact that taxes may have been evaded is not sufficient to prove that they in fact were evaded.

The evidence relating to violation of Public Service Commission regulations is found in Exhibit 32, being the Highway Patrol record of all arrests of Riss vehicles during the years 1953, 1954 and 1955. An examination of this exhibit reveals only 17 arrests in 1954 and 32 in 1955 for violation of Public Service Commission regulations. Seven of these charges were dismissed by the Prosecuting Attorney, leaving a total of only 42 convictions in the two years. According to relators evidence, Riss vehicles made over 26,000 separate trips across the State of Missouri in that period. If the Highway Patrol was able to detect and obtain convictions on only 42 violations of Public Service Commission regulations out of that number of trips, it would not appear that Riss was bent on a program of intentional violation of those regulations. That violations did occur is not denied, but in view of their number and the evidence that some of them may have been unavoidable, they are not considered to be of great consequence.

Exhibit 32 also contains a record of the arrests of Riss vehicles, or, more accurately stated, the drivers of those vehicles, for the violation of other laws of the state. The

exhibit shows 158 arrests for weight violations in 1954 and 1955, and a total of 31 other arrests on miscellaneous charges. Of the overweight charges, 50 are marked "gross" and refer to total weight. The remainder refer to weight on the axle. This record, of course, demonstrates that violations of the law did occur, but in view of the evidence of possible error in the scales, the shifting of loads in transit, and the large number of trips made during the period involved, the violations are not considered to be extremely serious or unusual. Certainly they do not indicate a studied plan to deliberately violate the law.

There remains a consideration of the evidence relative to the violation of the registration laws by respondents, and it may here be noted that relator has tacitly admitted that these alleged violations constitute the only basis upon which the writ of quo warranto should issue in this case.

Passing now to that phase of the case, it will be recalled that during the period from 1950 to mid-1954, Riss conducted its operations almost exclusively with tractors leased from individual owners, the majority of the leases being periods of more than 10 days. These vehicles traveled Missouri highways with licenses issued by several different states, in many instances not the state of residence of the title holder, and not the state of incorporation of Riss. Whether or not this method of licensing violated the Missouri registration laws is not particularly important in determining whether the relief prayed by relator should be granted. The statute upon which the officials of the state relied in their claim that Riss was violating the registration law during this period was repealed, effective July 29, 1952, and there have, of course, been no violations based on that statute since that date. Relator indicates that he considers the evidence of licensing practices before

July, 1952 as background for subsequent developments only and it should be so accepted.

The real issue in this case came to the fore when Riss abandoned the former owner-operator type of lease operation and began operating with tractors and trailers newly acquired by TM&E and leased to Riss. Delivery of these vehicles began in May, 1954 and the leases became effective [redacted] deliveries were made. Since some of the leases contained an option to purchase the leased vehicle Riss was, under the existing statutory definition of owner, at least qualified to register the vehicle. The obligation to register the remainder rested upon TM&E as owner, but that duty was delegated to Riss under the terms of the leases. The evidence showed, however, that in many instances licenses were purchased by TM&E as well as by Riss.

In 1954 and 1955, the company-owned trailers were, almost without exception, licensed in Missouri, so that no complaint is made by relator as to trailer registration. The tractors, however, were, in 1954, licensed in four different states: New York, Oklahoma, Kentucky and Missouri. In 1955 the tractors were licensed in New York, New Jersey, Oklahoma and Missouri and during the year the New York licenses were transferred to Pennsylvania. No valid complaint could be made by the State of Missouri as to this method of registration if none of the tractors licensed in foreign states traveled Missouri highways. However, the evidence shows that in 1954 and 1955 Riss vehicles bearing foreign licenses made a total of over 17,500 trips touching the highways of Missouri. None of these vehicles had licenses issued by the state of incorporation of either Riss or TM&E, and none of them were licensed in Missouri. If such use of Missouri highways is not permitted by the motor vehicle registration laws of Missouri, then each of those trips would be a separate violation of the laws.

Respondents, however, insist that none of the trips constituted violations of the Missouri law. They say that their vehicles were properly licensed in the foreign states, and that under the Missouri law they were entitled to reciprocity and to the use of Missouri highways without Missouri licenses.

The determination of this question hinges upon the construction and interpretation to be given the Missouri motor vehicle registration statutes and a review of the applicable statutes is here appropriate.

Section 301.020 RSMo 1949 requires the owner of every motor vehicle operated upon the highways of this state to register the vehicle in this state. By Sec. 301.010 RSMo 1957, Cum. Supp., an "owner" of a motor vehicle is presently defined as any person holding the legal title thereto or having a lease with the right to purchase. Prior to July 29, 1952, any person having the title or the exclusive use of a motor vehicle for a period of more than ten days was considered to be the owner.

The only escape from this registration requirement, at least so far as this litigation extends, is the so-called reciprocity statute, Sec. 301.270 RSMo 1949. By the provisions of that section of the statutes, a non-resident owner who has duly registered his vehicle in the state of his residence may operate the vehicle in Missouri without registration in this state, provided the state of his residence grants a like exemption to vehicles owned by Missouri residents and registered in this state.

By Sec. 301.010 (17) RSMo 1957, Cum. Supp., a non-resident is defined as a resident of a state or country other than the State of Missouri.

The question for determination, therefore, is primarily that of residence. Relator takes the position that for the

purposes of the foregoing statutes, a corporation is a resident of the state of its incorporation only, and that to be entitled to reciprocity Riss & TM&E could only license their vehicles in the states of Colorado or Illinois, being the respective states of incorporation. Respondents have contended that for the purposes of the registration laws, at least, they are residents of every state in which they do business, and therefore, are residents of each of those states in which they purchased licenses. If Missouri has "reciprocity" with those states, respondents would conclude that under the provisions of Sec. 301.270 RSMo 1949, they are not required to license such vehicles in Missouri.

The general rule is that the domicile, the residence, the citizenship of a corporation can only be in the state by which it was created, notwithstanding it may lawfully do business in other states. This court, in the case of *State ex rel. N. W. Mutual Fire Ass'n. v. Cook*, 349 Mo. 225, 160 S.W.2d 687, recognized this to be the general rule and cited many of the text authorities and decisions in other states following the rule. In a review of the Missouri decisions, it was demonstrated, however, that Missouri courts have held in several instances that the word "resident", as used in various statutes of the state, does include foreign corporations doing business in this state. Accordingly, the court recognized that there are exceptions to the general rule "where the legislature used the word 'resident' so as to include both domestic and foreign corporations".

Respondents have cited three cases in support of their position that they are residents of each state in which they purchased licenses: *City of St. Louis* v. *Wiggins Ferry Co.*, 11 Wall. 423, 20 L. Ed. 192; *State ex rel. Hennings* v. *Williams*, 345 Mo. 22, 131 S.W.2d 561; and

Hale v. *St. Louis & S.F. Ry. Co.*, 134 P. 949 (Sup. Ct., Okla.). Those cases do hold that a corporation may, for certain purposes, such as service of process and liability for payment of personal property taxes, have a residence in a state other than the state of incorporation. However, in each case it was held that the legislature had intended to include foreign corporations as residents of the state for the particular purpose involved and it is clear that all of those cases come within the exception referred to in the *Cook* case. It is apparent, therefore, that in the principal case the general rule will be applicable, unless it can be shown that respondents come within the scope of the recognized exception to the rule. The question, then, is whether or not the word "resident" is used in the motor vehicle registration laws of any of the states here involved, in such a manner as to include both foreign and domestic corporations.

Considering first the motor vehicle registration laws of Missouri, an examination of those statutes will reveal nothing to indicate an intention to treat foreign corporations as residents of the State of Missouri, or of any state other than the state of incorporation. Our statutes differentiate between residents and non-residents, and grant certain privileges to non-residents not permitted to residents of the state. The very purpose of the so-called "reciprocity" statute is to permit the use of our highways without registration by a class described as non-residents, being defined by the statutes as residents of a state other than the State of Missouri. Presumably foreign corporations are included in this definition of non-residents, as no effort is made in the statute to exclude them. It appears then that the State of Missouri does not consider non-resident corporations as residents of this state within the purview of the motor vehicle registration laws.

Further, there is nothing contained in the statutes to indicate that Missouri will recognize that a corporation may become a resident, for the purposes of these laws, of any state other than the state of incorporation.

Similarly, a review of the motor vehicle registration laws of Oklahoma, New Jersey, New York and Pennsylvania reveals nothing to indicate an intention to recognize foreign corporations as residents of those states for the purposes of their motor vehicle registration laws. The law of Kentucky, as to residence, is not clear as that state is a party to a reciprocal agreement with ten other states. (Exhibit 701) It appears, however, that Kentucky recognizes licensing in the state of domicile, not on the basis of residence in that state, but on the basis of a reciprocal contract.

There being nothing in the statutes of any of the states here involved to change the general rule, it must be held that the rule is applicable in the present case and that the residence of respondents is limited to the respective states of their incorporation.

Suppose, however, that by means of some magic, the motor vehicle registration laws of the State of Missouri might be interpreted to mean that both domestic and foreign corporations are, for the purposes of those laws, residents of Missouri. Would not this interpretation result in the requirement that the foreign corporation register all its vehicles in Missouri that traveled the highways of the state? The only escape from this requirement is the non-residence of the owner under the provisions of Sec. 301.270 RSMo 1949, and if respondents do not qualify as non-residents under that section, they are bound to register their vehicles in Missouri. By the same reasoning, respondents would be required to register all their vehicles in New York, New Jersey, Oklahoma or Pennsylvania if

the statutes of any of those states were interpreted to include non-resident corporations as residents.

Respondents, therefore, must go even further and find an intention in the motor vehicle registration laws to treat non-resident corporations as residents for a limited purpose and to a limited extent only, that is, to the extent of their motor vehicles based or domiciled in the state. They must, and they do, ask each state in which they have based any of their vehicles to consider them as residents of that state as to those vehicles, but on the other hand, to consider them as residents of other states as to vehicles based in those states. They would ask Missouri to grant them reciprocity as to vehicles based elsewhere, on the theory of their non-residence, while admitting liability to register those based here, on the theory of residence in Missouri.

Just how this can be done the respondents do not say. They apparently take the position that it is the residence of the vehicle and not that of the owner that is important, and they suggest that the laws should be construed in this manner. The statutes, however, grant reciprocity to the owner and not to the vehicle, and it would be a strained construction of the statutes to give them the meaning that respondents may be residents of Missouri with regard to their vehicles located or domiciled here, and non-residents as to their other vehicles, and further, that as to those vehicles the respondents are residents of each of the various states in which the vehicles are located.

Suffice it to say that this intent is not demonstrated in the statutes of either Missouri or, with the possible exception of Kentucky, of any state in which respondents have registered their vehicles.

Respondents destroy their own argument, however, by their admission—in fact, their assertion—that tractors

are, in a sense, "fungible", in that they are interchangeable with trailers, and that, due to the continuing and constant changes in their operations, it is not possible to locate a tractor at any given point. This same characteristic of trailers was given by respondents as their reason for buying all trailer licenses in the State of Missouri. It would appear that this condition also invalidates their suggestion that the statutes be construed to permit registration of tractors in the state of the domicile of the tractors.

At this point in their argument, respondents, apparently deciding, due to the "fungible" nature of tractors, to abandon the theory of licensing according to tractor domicile, suggest that they are in compliance with Missouri law when they license in all states in proportion to the mileage traveled in each state. To this suggestion, it need only be said that the Missouri statutes are utterly devoid of any reference to or authority for that system of licensing. Further, as will be hereinafter noted, respondents, while continuously proclaiming their right to license according to vehicle domicile or miles driven in each state, in fact made no effort to buy their licenses in accordance with either theory.

No case has been found which supports the motor vehicle domicile theory or the percentage of mileage theory in connection with the application of statutes similar to those in Missouri. The few cases on the subject are annotated in 16 A.L.R. 2d 1414. One of the cases is *State of New Jersey* v. *Garford Trucking*, 4 N.J. 346, 72 A.2d 851, 16 A.L.R. 2d 1407. In a somewhat analogous situation, the Supreme Court of New Jersey held in that case that the domicile of a motor vehicle does not determine the question of residence. The defendant was a trucking company organized in New Jersey. It maintained an office and terminal in Rhode Island and had certain motor vehicles based

and licensed in that state. One of these vehicles drove through New Jersey enroute from Rhode Island to Delaware, and an arrest was made for operating an unlicensed vehicle. The registration and reciprocity statutes of New Jersey are very similar to those in Missouri. In applying those statutes, the court held that the defendant corporation did not become a non-resident of New Jersey by transacting business or basing its vehicles in another state and that the license issued by the State of Rhode Island would not be recognized in New Jersey.

See also *Hilburn* v. *Lerrin Transp. Co.*, 197 S.W.2d 149 (Tex. Civ. App.), holding that a Texas corporation could not, as a resident of Texas, also be a non-resident and entitled to reciprocity with regard to its vehicles based in Louisiana.

The conclusion is inevitable that for the purposes of the motor vehicle registration laws, respondents must be considered residents of the states of their incorporation only; that the motor vehicle registration laws of Missouri will not permit registration either on the basis of domicile of the vehicle or the percentage of miles traveled, and that respondents were not in compliance with the motor vehicle registration laws of Missouri when they operated their vehicles upon the highways of the State without licenses issued by the State of Missouri or by the state of incorporation of either of respondents. If this results in inequities or hardship (and much has been written on the subject), the remedy is with the legislature. We are here concerned with the construction of the statutes as they are written, not with a determination of what the policy of the state should be. The legislature has already undertaken the solution of that problem.

Respondents in their answer and brief have attacked the constitutionality of Section 301.270, RSMo 1949, "as construed and sought to be applied by relator".

Constitutional questions must, of course, be raised at the first available opportunity. *Ivey* v. *Ayers*, Mo. Sup., 301 S.W.2d 790. It is not sufficient to allege generally that a statute is unconstitutional, but the facts relied upon to show violation of the constitution must be set forth in the pleading. *State ex rel. Kenosha Auto Transport Corp.* v. *Flanigan*, 349 Mo. 54, 159 S.W.2d 598; *State* v. *Harold*, 364 Mo. 1052, 271 S.W.2d 527, 528; *City of St. Charles* v. *Union Electric Co. of Missouri*, Mo. App., 185 S.W.2d 297, 303.

Neither is it sufficient to allege that a statute is unconstitutional if construed or interpreted in a certain manner. The constitutionality of the statute must be challenged directly. *State ex rel. Volker* v. *Kirby*, 345 Mo. 801, 136 S.W.2d 319; *Phillips Pipe Line Co.* v. *Brandstetter*, 363 Mo. 904, 254 S.W.2d 636.

In the answer filed by respondents, it is alleged in paragraph 14 "that the construction and interpretation of said Section 301.270 and its application by the relator, in the above mentioned respects, to vehicles moving solely in interstate commerce are all violative of Article I, Section 8, Constitution of the United States and violate the laws of the United States in that such application, under such interpretation, constitutes an unreasonable burden upon and unreasonable interference with interstate commerce."

This attempt to challenge the constitutionality of Section 301.270 is insufficient for two reasons. First, it does not specify the facts upon which the claim of constitutional invalidity is based; does not show how respondents' constitutional rights have been or will be denied, and hence

amounts to a mere legal conclusion. Secondly, it does not directly challenge the constitutionality of Section 301.270, but refers solely to the construction and interpretation placed thereon by relator.

At the conclusion of the trial and following the making of oral argument, respondents filed an amended answer attempting to supply the deficiency of their attack upon the constitutionality of Section 301.270. It is doubtful, however, in view of the requirement that these questions be raised at the first available opportunity, that the issue was properly presented by the amended answer. It may possibly be contended that since the information in this case did not specifically refer to Section 301.270, it was not necessary that the constitutionality of the statute be challenged by the original answer. That situation existed in the case of *Butler* v. *Board of Education of Consolidated School Dist. No. 1*, Mo. Sup., 16 S.W.2d 44, and it was there held that the constitutional question could be raised by an amended answer. However, it is evident from respondents original answer that they were aware in the very beginning that relator was relying upon Section 301.270, and there is hence no valid reason, as there was in the *Butler* case, for not raising the question in a proper manner in the answer as originally filed. Under these circumstances, the issue may not be raised by an amended answer. *Dudley* v. *Wabash R. Co.*, 238 Mo. 184, 142 S.W. 338.

Further, the amended answer also attacks the interpretation and construction placed upon the statute by relator, instead of directly attacking the constitutionality of the statute. It appears, therefore, that respondents have not properly raised any constitutional questions in this case.

In any event, the suggestion of the unconstitutionality of the motor vehicle registration laws of the State of Missouri is without merit.

Respondents first suggest that the application of those laws contended for by relator would deprive respondents of their property without due process of law because of the unreasonableness of the registration fees, and would deny them the equal protection of the laws for the reason that such application would discriminate against Riss as a Colorado corporation in favor of some other carrier incorporated in a state with which Missouri has "reciprocity". These arguments were refuted by the Supreme Court of the United States in *Bode* v. *Barrett*, 344 U.S. 583, 97 L. Ed. 567, 73 Sup. Ct. 468. Further, as relator suggests, the evidence shows that Riss did not license any of its vehicles in the State of Colorado, and it is, therefore, not in a position to claim discrimination or urge a denial of equal protection of the laws on a purely hypothetical situation.

Respondents further argue that the tax imposed upon them exceeds fair compensation to the State of Missouri for the use of its highways and, thus, is an undue burden on interstate commerce. They have gone to considerable lengths to demonstrate the cost per mile for the actual use made by respondents of the highways of Missouri and have argued that this cost is unreasonably high. However, the registration fees levied by the Missouri laws are not based on the number of miles actually traveled by a vehicle, but are a charge made for the privilege of using the highways. *Aero Mayflower Transit Company* v. *Georgia Public Service Commission*, 295 U.S. 285, 79 L. Ed. 1439, 55 Sup. Ct. 709; *State ex rel. Illinois Greyhound Lines, Inc.* v. *Public Service Commission*, 341 Mo. 190, 108 S.W.2d 116. Therefore, unless it be shown that the fees exceed fair compensation even when the privilege is fully utilized, the cost per mile actually traveled is of no significance. For that reason respondents' failure to disclose whether they fully availed themselves of the privilege to use the high-

ways leaves their figures reflecting actual use worthless as a measure or indication of the value of that privilege. *Dixie Ohio Express Co.* v. *State Revenue Commission of Georgia*, 306 U.S. 72, 83 L. Ed. 495, 59 Sup. Ct. 435. Respondents, therefore, have failed to uphold their burden of proving that the amount of the fees charged exceeds fair compensation for the privilege of using Missouri highways. That this burden is upon respondents, is beyond question. *Interstate Busses Corp.* v. *Blodgett*, 276 U.S. 245, 72 L. Ed. 551, 48 Sup. Ct. 230.

In addition, it is shown by the evidence that Riss is and has been engaged in both intrastate and interstate commerce. The validity of the registration fees as to intrastate operations has not been challenged; and since no additional charge is shown to have been made because of respondents' interstate operations, it is clear that they have failed to carry the burden of showing that the tax deprives them of rights which the Commerce Clause of the Constitution protects. *Bode* v. *Barrett, supra.*

In this connection, it may be noted further that the respondents' original answer attempts to raise a constitutional question only with regard to Section 301.270. Just how this statute, which does not levy any tax or registration charge, could be unconstitutional because of the unreasonableness of a fee charged by another statute is difficult to perceive.

The next contention made by respondents is that the licensing statute discriminates against interstate commerce because vehicles engaged in interstate commerce are charged the same fee as vehicles used solely in intrastate commerce, yet intrastate vehicles are able to and do use the highways of Missouri to a much greater extent than vehicles engaged in interstate commerce. This proposition was

rejected by the Supreme Court of the United States in *Aero Mayflower Transit Company* v. *Georgia Public Service Commission*, supra, the court holding that one who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he may.

Respondents' further argument that the licensing statute is unconstitutional because it discriminates against interstate commerce in requiring only one license from intrastate vehicles, while interstate vehicles may be compelled to obtain licenses in more than one state, is wholly without merit. Obviously, Missouri requires but one license for the privilege of using its highways whether the vehicle is engaged in interstate commerce, intrastate commerce or both. It is now too well settled to be open to question that a state may levy a proper tax for the privilege of using its highways, and this is so even though the persons affected are engaged in interstate commerce. *Hicklin* v. *Coney*, 290 U.S. 169, 78 L. Ed. 247, 54 Sup. Ct. 142. See also the cases in 17 A.L.R. 2d 421.

Respondents next assert that the evidence is insufficient to show a "willful" violation of the laws by either of the respondents, and they suggest that if they have violated the motor vehicle registration laws, their actions have been the result of a bona fide belief that a proper construction of the laws would authorize the manner of licensing proposed by them. Respondents advance the theory that relief may not be granted in these proceedings in the absence of proof of willfulness, and they would define "willful" to mean the intentional doing of wrongful acts, with knowledge that they were violations of the law, and further intending them to be violations of the law.

In this argument respondents misconceive the fundamental purpose of quo warranto proceedings. Quo warranto in its broadest sense is a proceeding to determine the

right to the use or exercise of a franchise or office and to oust the holder from its enjoyment if he has forfeited his right to enjoy the privilege, or if his claim is not well founded. *State ex rel. Schneiders Credit Jewelers* v. *Brackman*, Mo. Sup., 272 S.W.2d 289, 292. A franchise is a special privilege conferred by the soverign upon a person or corporation. It is held as a trust and is lost when the terms of the trust are violated. *State ex inf. McKittrick* v. *Murphy*, 347 Mo. 484, 148 S.W.2d 527. In quo warranto against a corporation, the state proceeds for a violation of the company's implied contract not to violate the franchise granted by the state, which means that it will comply with the general laws of the state. *State on inf. McKittrick* v. *Amer. Ins. Co.*, 346 Mo. 269, 140 S.W. 2d 36, 40.

Such being the essence of quo warranto, it was stated in *State ex inf. Walker* v. *Equitable Loan and Investment Assoc.*, 142 Mo. 325, 328, 41 S.W. 916, 919:

> "But if the word 'willful' is to be used to convey its usual signification, to wit, that of one with a *bad* motive or purpose, then its use would be foreign to a case of this sort, because this is simply a *civil* proceeding, and it has been held that it is enough to work a forfeiture that the performance of the condition is neglected or designedly omitted, and that the ingredient of a *bad or corrupt motive is not necessary.*"

It is thus apparent that proof of willfulness, as defined by respondents, is not essential in quo warranto proceedings.

The case of *State ex inf. Taylor* v. *Cumpton*, 362 Mo. 199, 240 S.W. 2d 877, cited by respondents, is readily distinguishable from the instant case. The information in that case sought to oust from office a duly elected public officer. The court held that proof of willfulness was necessary, but it was noted that under the statutes and general law, the

only basis for ouster in such cases is proof of willful misconduct. Such is not the case when the information seeks withdrawal of a corporate franchise.

Respondents cite as additional authority *State ex inf. McKittrick* v. *Globe-Democrat Publishing Co.*, 341 Mo. 862, 110 S.W. 2d 705, and *State ex inf. Huffman* v. *Show-Me power Cooperative*, 354 Mo. 892, 191 S.W. 2d 971. In the *Globe-Democrat* case the court did not issue a writ of ouster, but did impose a fine upon respondent. The fine was in a nominal amount for the reason that the court found that the respondent had acted in good faith. In the *Show-Me Power Cooperative* case a writ of ouster issued, but because the respondent corporation acted in good faith and on advice of counsel, it was given one year in which to reorganize in a lawful manner. These two opinions completely refute respondents suggestion that their alleged good faith is a defense to the action.

This is not to say that willfulness, used in the sense of bad motives, bad faith or an intent to violate the law, is not an important factor to be considered by the court. In determining the penalty to be imposed, the court may, and should, in every case consider the good or bad faith of the respondent as shown by the evidence.

In view of the conclusion that during the period of time involved in this case, Riss was a resident of the State of Colorado, and TM&E was a resident of Illinois, it is apparent that both companies were in violation of the laws of Missouri, when their vehicles were operated over the highways of Missouri without Missouri licenses and with licenses issued by the states of New York, New Jersey, Pennsylvania, Oklahoma and Kentucky. These violations were constant and repeated, and they continued over a period of almost 2 years. Such violation of the laws of

Missouri is an abuse of the franchise(s) granted to respondents, and a violation of the trust imposed in them by the state. The state is, therefore, entitled to revoke the privilege of exercising the corporate franchise(s) heretofore granted to each respondent, or to penalize them for the abuse of their franchise(s).

As heretofore suggested, in determining the penalty to be invoked, consideration should be given to the evidence as it relates to the good or bad faith of the respondents in their licensing practices. As evidence of their good faith, respondents first suggest that the registration statutes are complex and confusing, and that they were justified in their uncertainty as to the meaning of the law. Confusing in what respect? Surely respondents could not have been confused by the provisions of the registration statute, which plainly states that every owner of a motor vehicle operated on the highways of Missouri shall register the vehicle in Missouri. There should certainly be no uncertainty or confusion in the definition of "owner" or "non-resident" as contained in the statutes. The "reciprocity" statute is plain and clear in its provisions. The only possible chance for confusion would be in determining just what is the state of residence of a foreign corporation. As hereinabove noted, there is no reasonable basis for the construction suggested by respondents, and even they admit that as a practical matter their suggested plan of licensing according to domicile would not be workable.

Respondents say that because the highway patrol officers and other state officials were confused as to the proper interpretation of the registration statutes, respondents could not have been "willful" in any violation of those laws. It is apparent that there was some confusion in the minds of certain of the patrol officers with

regard to the residence of respondents, and it would appear that in making arrests the respective officers of the patrol would normally know the basis for the arrests. However, the difference of opinion among the officers of the patrol only concerned the reason for requiring registration in Missouri and this phase of the controversy was apparently never discussed or made an issue in any of the conferences, so that respondents are in no position to now complain that they were misled or confused by any of the statements of the patrol officers. Regardless of the reason assigned, every officer of the patrol and every state official with whom respondents discussed the problem, definitely, unequivocally and repeatedly stated that Riss vehicles using Missouri highways must be registered in Missouri. Respondents did not quarrel with the reason for this requirement. They merely proposed a substitute plan which they suggested would be fair and equitable.

The alleged inconsistency of the M. F. A. Oil Company and Frisco opinions of the Attorney General is cited by respondents as evidence that the law was unsettled and as an excuse for their failure to follow the demands of the state as to licensing. A study of the two opinions reveals no inconsistency. Both are based upon the premise that corporations are residents of the state of incorporation and both deny reciprocity to a corporation which has registered its vehicles in a state other than the state of incorporation. In any event, respondents could not have been disturbed by any inconsistency in the opinions when they set their licensing policy in 1954, as the Frisco opinion was not written until October 4, 1954 and respondents had begun their licensing for 1954 long prior to that date.

In this connection, it might be stated that although at least one of these opinions was discussed with representa-

tives of respondents, there is no evidence that any criticism of the opinion, or any suggestion of its inapplicability to Riss was ever made by them. Most certainly, if respondents had any quarrel with the legal basis of the opinion they would have advanced their ideas at an early date.

It is suggested by respondents that the Public Service Commission has for years recognized multiple residence of carriers and has made agreements with Riss and other carriers for the division of registration between Missouri and other states, and that these past practices justify the method of licensing adopted by respondents or show their good faith. Assuming that such agreements were made and even assuming that they did involve registration, there again is no evidence that in the face of the positive demands of the state officials, the respondents ever mentioned the Public Service Commission practices or agreements or ever asserted that those practices might support their proposal. They do not pretend to say that the Public Service Commission told them that they could license their vehicles in 1954 and 1955 as they did. It is difficult to see how a past agreement would show the good faith of respondents in the absence of a present agreement specifically applying to their present operation. As in the case of the divergent views of the patrol officers, the respondents are using the former Public Service Commission practice in retrospect in an attempt, in some degree, to justify their actions or to soften their effect.

Both parties to this action lay stress upon the "test" cases mentioned in evidence, relator interpreting this evidence to show that respondents used the cases as a means of preventing the enforcement of the law, while respondents maintain that the evidence shows a good faith

effort on their part to obtain a construction and interpretation of the law.

The evidence regarding discussion of test cases prior to 1952 has little bearing on the issues. Some of the arrest cases in that period were submitted to the Circuit Court on agreed statements of fact and although the resulting convictions were never appealed, the evidence shows that for some undisclosed reason they were still pending in July, 1952 when the statute defining "owner" was amended. After that date there was no contention that Riss should license leased vehicles and it deserves no criticism for not thereafter appealing those cases further.

With the inevitable commencement of arrests of the new company-owned vehicles in 1954, discussions of test cases were renewed. It appears that in practically every conference with state officials the representatives of Riss discussed or made promises to appeal an arrest case or to file a declaratory judgment action. Again stipulations of fact were agreed upon in the arrest cases and convictions obtained, but the attorneys for Riss suddenly determined that all of the issues could not be settled in an appeal of these cases and no appeal was ever taken.

The first decisive legal action taken by Riss was the injunction suit in Cole County. Shortly after this action failed, Riss joined with TM&E in a suit in Jackson County asking both an injunction and a declaratory judgment. Here they were successful in stopping arrests for over ten months. Fearing ultimate defeat in this case, however, a similar action was filed in Cole County and left pending in order to avoid any lapse in the injunction. In view of the failure of respondents to plead over in the Cole County case after dismissal of their petition, and in view of the ultimate disposition of all of the cases and the manner in which they were handled by respondents, it does not ap-

pear that respondents were making a sincere effort to have the registration question determined, but were principally endeavoring to postpone the day of reckoning.

The officers of Riss were early made aware of the attitude of the state toward any proposed plan of pro-rata or basing point licensing. Even before delivery of their new vehicles they were told by responsible state officials that under the law they must register their vehicles in Missouri and would be arrested if they failed to do so. With this knowledge at hand the general counsel for Riss, in a masterpiece of understatement, advised the officers of the company that he "doubted" the state would recognize a pro-rata system of licensing. If at that time respondents had an honest doubt about the law, and a sincere desire to obtain a construction in the courts, they could have proceeded to do so as soon as they received delivery of the first vehicles. Instead, the respondents, both Riss and TM&E, proceeded to obtain licenses for the vehicles in accordance with their own desires, and thereafter traveled the highways of Missouri with foreign licenses in open defiance of the laws of Missouri.

Respondents suggest that the treatment by the Highway Patrol of other carriers in similar circumstances to Riss would warrant them in believing that they could properly license their vehicles as they did. However, the fact that some of the trucks operated by other foreign corporations did not bear licenses of the state of incorporation or of Missouri would not necessarily excuse respondents. In the first place, there was no evidence of the ownership of those vehicles and no proof that they were actually not properly licensed. Further, there was no proof that respondents knew of the treatment accorded those carriers or that they in any manner relied upon that treatment when they registered their own vehicles, or that they complained

to the Missouri officials that there was any discrimination. Such evidence, if admissible for any purpose, would be entitled to no more weight than evidence that other vehicles under the same circumstances as Riss were arrested by the Highway Patrol.

Respondents claim good faith on their part because of the fact they relied upon legal advice in reaching their decisions as to where to register their vehicles. According to the evidence, the only legal advice they received on licensing came from their own legal department, and the basis for the opinion and recommendation of the legal department was never stated in evidence. In fact, there is nothing in the evidence to indicate that any representative of respondents ever gave a single citation of authority or Missouri precedent, legal or otherwise, in support of their proposal, to the Riss executive committee, or to any representative of the state. Under the circumstances, reliance upon legal advice entitles respondents to very little credit. The insincerity in their suggested plan and lack of reliance on legal advice is demonstrated by the fact that they actually licensed more vehicles in Missouri than their plan would call for, and on two separate occasions offered to license a substantially larger number if the state would cease arrests.

The fact that other states may have entered into a reciprocal agreement recognizing principal offices of interstate carriers in more than one state, and considering the basing point of vehicles in connection with licensing, is no evidence of good faith on the part of respondents. The question respondents had to decide was the construction of the law of Missouri and not that of a group of other states. Further, the agreement introduced in evidence (Exhibit 701) was dated August 12, 1955, many months after respondents had already cast the die of their licensing program.

It should be said to the credit of respondents that they did not deliberately ignore the Missouri registration laws and the enforcement authorities when they began the registration of new equipment in 1954. Many conferences were held in an effort to develop a plan that would satisfy the state officials, and even though the registration laws might be searched until infinity without finding an iota of authority for a basing point or pro-rata licensing plan as proposed by respondents, it is evident that they were earnestly trying to avoid difficulty with the State of Missouri. It should be kept in mind that Missouri was not the only state which might show concern over the registration of Riss vehicles, and for respondents to license all their vehicles in Missouri in total disregard of the other interested states might easily result in difficulty for respondents from other fronts. Therefore, their proposals for compromise may be considered as a mitigating factor in their favor.

It is not to respondents credit, however, that after they should have realized the futility of insistence upon a compromise plan, they ignored the repeated warnings of the state officials and made their registrations to suit their own convenience, apparently considering principally the economy of registration in the selected states.

Relator has criticized the methods employed by respondents in their negotiations with the Attorney General's office, principally the attempts to influence the Attorney General through the intervention of mutual friends and politicians. In this regard it is not necessary to decide whether or not Mr. John Gage telephoned General Dalton prior to the conference in November, 1954, as testified by General Dalton. If the call did occur, there was nothing at all improper about it and it should reflect upon neither respondents nor Mr. Gage.

With regard to the suggestion made in this conference that friends of General Dalton would see him with regard to Riss, the evidence seems clear that such a suggestion was made by Mr. Robert Riss prior to any statement by General Dalton about sending politicians to see him. Again, however, it is difficult to attribute improper motive to such a statement by Mr. Riss.

The evidence does establish that Senator Madison was sent to General Dalton by Mr. Richard Riss and that he was authorized by Mr. Riss to make an offer to license 200 tractors in Missouri in compromise of the pending dispute. Although it is entirely proper for a State Senator to call upon another state official in behalf of a constituent, in this particular instance the circumstances all indicate an attempt to use influence or pressure in behalf of respondents. The fact that the settlement offer was made is also indicative that respondents knew that the law of Missouri required them to license in Missouri all vehicles traveling the highways of this state, and suggests that, at least in the year 1955, they purchased their licenses in defiance of the laws, knowing they were wrong in doing so.

Relator has emphasized as evidence of bad faith on the part of respondents, the directions to drivers to avoid patrol scales and to use Highway 40 if the tractor did not have Missouri license plates. In explanation, respondents say they were forced to this action by the innumerable arrests on Highway 66 and the resulting time delays and cargo losses. It is difficult to assess the importance of these instructions for the reason that the manifests containing the instructions were, with only 5 or 6 exceptions, dated during the time the injunction against arrests was in effect. Because of the injunction, no arrests could have been made for license violations if the vehicles had driven on Highway 66 and had stopped at the scales. Any attempt at ex-

planation of the instructions under these circumstances would be mere conjecture, as this circumstance was not discussed by any of the witnesses. The instructions do, however, indicate a further attempt on the part of Riss to avoid the application and enforcement of the registration laws of Missouri, and most certainly could not be cited as evidence of good faith on the part of respondents.

Perhaps the most condemning indictment against respondents is the manner in which they actually did license their vehicles. From the very beginning of the controversy leading to this litigation, they have contended that the registration laws of Missouri should be construed to permit licensing and to grant reciprocity on the basis of the domicile or location of their vehicles, or on a basis of percentage of miles traveled. This contention related only to tractors, however, and not to trailers, as practically all trailers were registered in Missouri at the relatively low license rate. Respondents viewed with alarm the difficulty they would encounter with other states if some such plan were not adopted, and spoke of the fairness and equity of these proposed plans. Yet, when the time came to actually register their vehicles, they seemed to forget the sense of fairness that was uppermost in their minds at the time of their discussions with the representatives of the state, and ignored completely any consideration of either domicile or percentage of miles traveled. The evidence shows that their vehicles were "domiciled" in the states of Illinois, Ohio, Michigan, Nebraska, Kansas, Colorado, Texas, Oklahoma, Kentucky and Missouri. A few of their tractors were licensed in Kentucky in 1954 and in both 1954 and 1955 a number of the tractors were licensed in Oklahoma and Missouri but at no time did they license a single vehicle in the other seven states in which they were "domiciled". Not one tractor was ever domiciled in New York,

New Jersey or Pennsylvania, but the evidence shows that the great majority of their licenses were purchased in those states in 1954, 1955 and 1956.

Although the vehicle domicile theory was stated by respondents as the basis for the three injunction and declaratory judgment suits, as above noted they later abandoned that theory and proposed a mileage pro-ration system of licensing. This was the plan they repeatedly urged upon representatives of the state when attempting to work out a settlement agreement. On this theory however, their record of performance is even more deplorable. The stipulation filed by the parties shows that Riss carried on operations in 22 different states. Yet in 1954 and 1955 combined, the respondents registered their vehicles in only six of those states. The number of miles traveled in any of the states was not shown in evidence, but it is admitted that no state in which the vehicles were operated, with the exception of Missouri, Oklahoma, Kentucky, New York, New Jersey and Pennsylvania, ever participated in the registration of the company owned vehicles. Not one license was purchased in any other state in either of the two years and in 1955 the purchase of licenses in New York was discontinued, in spite of the fact that business in that state was steadily increasing.

In view of the record of licensing as actually carried out by respondents, the conclusion is inescapable that they were not sincere in their proposal to the representatives of the State of Missouri, and did not at any time intend to carry out the licensing program they suggested. Their affirmation of good faith appears a complete sham in the light of their actual performance.

Reference has heretofore been made to the conduct of the "respondents", including both Riss and TM&E. Riss, of course, is the operating carrier and on many of the oc-

casions referred to in evidence was the only company directly involved. However, the operation and management of the two companies is so interwoven and their interests are so alike that they operate, in practical effect, as one company. There can be no doubt that both companies are responsible for the registration violations shown in evidence. Both companies had sufficient interest in the arrests to join in the injunction and declaratory judgment actions filed in Jackson and Cole Counties. Both companies participated in the actual registration of the vehicles. Both are owned and managed by the same family. TM&E exists solely for the benefit of Riss and its sole function is to hold title to property operated or utilized by Riss. Accordingly, both companies have been equally guilty of the abuse of the franchise(s) granted to them by the State of Missouri.

Relator has suggested that the imposition of a fine against the respondents would be a proper remedy in this case, in place of the more severe penalty of ouster. The assessment of a fine in quo warranto actions is clearly authorized by prior decisions of this court and the Supreme Court of the United States, *Standard Oil Co.* v. *Missouri ex inf. Hadley*, 224 U. S. 270, 32 S. Ct. 406, 56 L. Ed. 760; *State on inf. Taylor* v. *American Ins. Co. et al.*, 355 Mo. 1053, 200 S.W. 2d 1, 52.

In determining the amount of a fine, relator asks the court to consider, among other factors, the number of Riss vehicles using the highways of Missouri in 1954 and 1955 without Missouri licenses. Relator computes this total at 333 vehicles in 1954 and 362 in 1955, and estimates a loss of revenue to the State of Missouri in the two years at approximately $300,000.00. An analysis of the various exhibits shows that in 1954 only 243 Riss vehicles without Missouri licenses made trips "across state," and in 1955 the

number was 312. The remaining vehicles made trips directly into St. Louis and Kansas City from out of State only, and although such trips would technically amount to violations of the law, they would not be so indicative of bad faith on the part of the respondents.

At this point, respondents suggest that a fine based on the amount of licenses evaded is improper because it would amount to the enforcement of the tax laws of other states, inasmuch as respondents could have avoided liability to Missouri merely by registering their vehicles in the states of their incorporation. This reasoning begs the issue. The facts are that no licenses were purchased in the state of incorporation of either company, and as a result, respondents thereby incurred liability to Missouri, and Missouri was entitled to the registration fees.

A more just criticism of a fine in the amount of revenue lost to the state is that to place a fine on that basis would be to transform the writ of quo warranto from one of ouster to one of collection. This is not the purpose and should not be the function of the writ.

A fine, of course, should be measured to some extent by the gravity of the offense. Considered from that standpoint, the evidence of registration evasions is of some importance. In addition, the evidence shows that over 17,500 trips were made in 1954 and 1955 on Missouri highways by Riss trucks without Missouri licenses. Each trip, of course, was a separate violation of Missouri laws. Further, the test check made in March, 1955 shows that Riss vehicles without Missouri licenses made 205 trips on Missouri highways in one four day period. If the injunction had not prevented arrests of these vehicles, each violation would have been subject to a fine of approximately $15.00. If these four days were an average for the ten month period of the injunc-

tion, the respondents, by use of the injunction, were able to avoid the payment of over $225,000.00 in fines during the time the injunction was in effect.

Measured by any criteria, the money saved by respondents and lost to the state by virtue of the registration violations amounts to a sizeable sum. The number of violations and the number of trucks involved represent a serious disregard for the laws of Missouri and merit more than nominal penalty.

Factors to be considered in mitigation, however, are the complexities of interstate motor carriage, the difficulty of keeping motor vehicle units in operation on definite runs, the demands of other states for registration revenue, the necessity of compliance with the laws of each state, the fact that any vehicle may operate in Missouri on only one or two occasions in a given year, as well as the effort of respondents to solve the problem by negotiations with state officials.

Considering all of the circumstances, it is recommended that a writ of ouster issue as to each respondent, as prayed in relator's information, but that such ouster be stayed upon condition of the payment of a fine by each respondent in the amount of $25,000.00 and the costs of these proceedings. Upon the foregoing findings, the following conclusions of law are entered:

(1) This Court has jurisdiction to issue a writ of quo warranto against a corporation holding Interstate Commerce Commission and Missouri Public Service Commission operating authority.

(2) Proof of willfulness, used in the sense of performance of unlawful acts, knowing them to be unlawful and intending them to be violations of the law, is not essential to the issuance of a writ of quo warranto.

(3) For the purposes of the motor vehicle registration laws of Missouri, the respondents are residents only of the respective states of their incorporation.

(4) As to constitutional questions:

(a) Respondents have not properly raised any constitutional issue.

(b) Respondents have failed to prove the unreasonableness of the registration fees provided by the Missouri statutes, and have failed to prove that they have been deprived of any right protected by the Commerce Clause of the Constitution of the United States.

(c) The motor vehicle registration laws of Missouri do not deny respondents due process of law or the equal protection of the laws, and do not discriminate against interstate commerce.

E. C. Curtis
Special Commissioner

APPENDIX C.

Section 301.020, Revised Statutes of Missouri (1949).

"*Registration of motor vehicles.*—Every owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state, except as herein otherwise expressly provided, shall file, by mail or otherwise, in the office of the director of revenue an application for registration on a blank to be furnished by the director of revenue for that purpose, containing:

"(1) A brief description of the motor vehicle to be registered, including the name of the manufacturer, motor number and character, and amount of motive power, stated in figures of horsepower;

"(2) The name, residence and business address of the owner of such motor vehicle;

"(3) If said motor vehicle be a commercial vehicle the weight of the vehicle and the desired load in pounds;

* * *"

(R.S.Mo. 1939 §8369, A. L. 1947 p. 663, A. L. 1945 p. 1194, A. 1949 S. B. 1110.)

Section 301.060, Revised Statutes of Missouri (1955 Cum. Supp.).

"*Annual registration fee.*—The annual registration fee shall be as follows:

* * *

"(2) For property-carrying commercial motor vehicles (not including property-carrying local commercial motor vehicles) having a gross weight of:

6,000 pounds and under	$ 20.00
6,001 pounds to 12,000 pounds	30.00
12,001 pounds to 18,000 pounds	50.00
18,001 pounds to 24,000 pounds	80.00
24,001 pounds to 30,000 pounds	130.00
30,001 pounds to 36,000 pounds	200.00
36,001 pounds to 42,000 pounds	300.00
42,001 pounds to 48,000 pounds	400.00
48,001 pounds to 54,000 pounds	500.00
Over 54,000 pounds	600.00

* * *

"(7) For each trailer or semitrailer there shall be paid an annual fee of seven dollars, and in addition thereto such permit fees authorized by law against trailers used in combination with tractors operated under the supervision of the public service commission. The fees for tractors used in any combination with trailers or semitrailers or both trailers and semitrailers (other than on passenger-carrying trailers or semitrailers) shall be computed on the total gross weight of the vehicles in the combination with load."

* * *

(R.S.Mo. 1939 §8369, A. L. 1943, p. 663 A. L. 1945 p. 1194, A. 1949 S. B. 1110, A. L. 1951 p. 695)

Section 301.070(4), Revised Statutes of Missouri (1955 Cum. Supp.).

"Computation of fees.—* * *

"4. Fees of commercial motor vehicles, other than passenger-carrying commercial motor vehicles shall be based on the gross weight of the vehicle or any combination of vehicles and the maximum load to be carried at any one time during the license period."

* * *

(R.S.Mo. 1939 §8370, A. L. 1943, p. 663, A. L. 1951 p. 695)

Section 301.120, Revised Statutes of Missouri (1955 Cum. Supp.).

"*License plates returned, when.*—When the owner of a motor vehicle moves the vehicle to another state, he shall return the license plate to the director of revenue within ninety days or upon the expiration of the period of reciprocity granted by the new state of residence; or if the owner of a motor vehicle ceases to operate the vehicle in Missouri, he shall return the license plate to the director of revenue within ninety days. (L. 1947 V. I p. 380 §8369b, A. L. 1951 p. 690.)

Section 301.270, Revised Statutes of Missouri (1949). [Repealed and re-enacted as Section 301.271 in 1957].

"*Registration of nonresidents—reciprocity*

"A nonresident owner, except as otherwise herein provided, owning any motor vehicle which has been duly registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner may operate or permit the operation of such vehicle within this state without registering such vehicle or paying any fee to this state, provided that the provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under the laws of the state, country or other place of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state." (R.S. 1939, §8375)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960.

No. 386

RISS AND COMPANY, INC., a Corporation, and TRANSPORT MANUFACTURING & EQUIPMENT COMPANY, a Corporation,
Appellants,

vs.

STATE OF MISSOURI ex inf. JOHN M. DALTON, Attorney General,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI.

MOTION TO DISMISS OR AFFIRM APPEAL AND BRIEF IN SUPPORT THEREOF.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960.

No. .....

RISS AND COMPANY, INC., a Corporation, and TRANSPORT MANUFACTURING & EQUIPMENT COMPANY, a Corporation,
Appellants,

vs.

STATE OF MISSOURI ex inf. JOHN M. DALTON, Attorney General,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

MOTION TO DISMISS OR AFFIRM APPEAL.

Comes now the State of Missouri, appellee above designated, by John M. Dalton, its duly elected, qualified and acting Attorney General, and moves this Court to dismiss

this appeal or in the alternative to affirm the decision of the Supreme Court of Missouri, for the following reasons:

1. The issues attempted to be raised by appellants on this appeal do not present any substantial federal question for determination by this Court.

2. There is not sufficient evidence in the record upon which this Court could base a determination of the issues attempted to be raised by appellants.

3. The issues attempted to be raised by appellants have been repeatedly decided adversely to the contentions of appellants by the previous decisions of this Court.

Wherefore, appellee prays that this appeal be dismissed or that the decision of the Missouri Supreme Court be affirmed.

JOHN M. DALTON,
Attorney General,
FRED L. HOWARD,
Assistant Attorney General,
RAYMOND S. ROBERTS,
Special Assistant Attorney General,
Supreme Court Building,
Jefferson City, Missouri,
Attorneys for Appellee.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM APPEAL.

STATEMENT OF FACTS.

In the statement contained in appellants' jurisdictional statement there are misstatements as to the facts and also conclusions which are not justified by the record in the case. Therefore, the State of Missouri feels that it is necessary to correct such misstatements and to present to the Court additional facts necessary for consideration of the issue now before this Court.

On page 5 of appellants' jurisdictional statement it is alleged that the Missouri officials demanded that all of appellants' vehicles which used Missouri highways be fully licensed in Missouri. This is not a correct statement of the position of the State of Missouri. The State of Missouri contended that all of appellants' vehicles which used the highways of the State of Missouri were required to be licensed so that they could legally operate on the highways of the State of Missouri. This could be accomplished either by license issued by the State of Missouri or by a license which would qualify the owner of the vehicle to reciprocity for the operation of such vehicle on the highways of the State of Missouri without registration and licensing of such vehicle in the State of Missouri.

Reference is made to the requirements of the Missouri Public Service Commission law. However, no issue as to such law was litigated in the State of Missouri, and the Supreme Court of Missouri pointed out in its opinion that

the construction of the Missouri Public Service Commission laws was not in issue in this case.

Appellants state that many of their tractors used the highways of Missouri only once or twice a year, and then only for a trip to the overhaul base located in Kansas City, Missouri. The records of truck movements which were presented in evidence do not substantiate this claim. These records show that the movements of appellants' vehicles were movements wherein the tractors were pulling a trailer with a load of freight thereon.

Appellants state that states other than Missouri, in which they operated their vehicles, were demanding that some Riss vehicles be licensed in such states. Testimony produced by appellants was to the effect that only the State of Oklahoma made any specific demands for license plates and that such demand was that approximately 20 tractors and trailers be licensed in the State of Oklahoma. There was never any showing as to the basis for this demand and there was never any contention that such demands were based on the laws of Oklahoma. There was no testimony that any other state made any demand for license upon appellants, and there was no contention that the laws of any other state required appellants to register vehicles in such states. Further, and more specifically, appellants did not claim that as to the states of New York and New Jersey, Pennsylvania, Delaware and Kentucky (where the vehicles in question were actually licensed), that any official demanded that any such vehicles be licensed in any such states or that the laws of such states required that any vehicles be licensed therein.

Appellants refer to extensive negotiations between their representatives and officials of the State of Missouri looking toward a settlement of the issues litigated in this case.

It should be pointed out that such negotiation was not a good faith attempt to discover a manner whereby appellants could comply with the laws of Missouri, and the Supreme Court of Missouri so found. Likewise, the Supreme Court of Missouri found that the appellants did not and could not, in good faith, contend for any construction of the Missouri statutes other than that applied by the Supreme Court of Missouri. It was also pointed out that appellants did not, in fact, buy licenses for their vehicles on the basis of any theory or construction for which they contended in negotiations with officials of the State of Missouri.

Likewise, the Supreme Court of Missouri found that appellants did not in good faith attempt to secure a judicial construction of the statutes of Missouri.

The judgment of ouster handed down by the Supreme Court of Missouri in this case was based upon a finding that appellants, and both of them, acting together and individually, followed a course and practice of deliberate, premeditated and continuous, knowing violation of the laws of Missouri.

As to the fact situation which gives rise to the issues at bar it is hoped that the following brief resumé of the evidence will be sufficient. At all times herein pertinent Riss and Company, Inc., was a corporation duly organized and existing under the laws of the State of Colorado. Transport Manufacturing & Equipment Company, a corporation, was a corporation duly organized and existing under the laws of the State of Illinois. Both are licensed to do business in Missouri as foreign corporations and both maintain their principal office and business headquarters in Kansas City, Missouri. Both are owned, controlled and operated by Mr. R. R. Riss, Sr., and members of his family. Riss is a certificated carrier in both interstate and intra-

state commerce in the State of Missouri, with certificates from the Interstate Commerce Commission and from the Missouri Public Service Commission.

TM&E has no certificates and does not operate any vehicles. It is used by Riss for the purpose of buying equipment on credit and to avoid interstate commerce commission credit regulations as to purchase by carriers. In about the middle of the year 1954, TM&E purchased and leased to Riss a fleet of approximately 500 new automotive tractors and 1,300 semi-trailers. Prior to delivery of this new fleet Riss performed the bulk of its operations with tractors leased from various individuals residing in many different parts of the country. Such individual lessors generally became employees of Riss and drove the vehicles so leased for Riss. During this time TM&E owned a fleet of approximately 800 trailers which were operated in conjunction with the tractors leased as above

After the delivery, commencing in the middle [redacted] 1954, of the new fleet of vehicles mentioned above, Riss operated primarily with such fleet and leased from individuals only for supplementary equipment.

After delivery of this new fleet of vehicles TM&E held title to approximately 500 automotive tractors and 1,300 trailers, together with certain real estate, terminals, etc. All of these were leased to Riss on long-term leases. TM&E did not, itself, operate any vehicles and did not lease to any one other than Riss. The leases between TM&E and Riss provided for payments in an amount sufficient only to reimburse TM&E for its costs and overhead expenses. It was not contemplated that any profit would result to TM&E from such leases. The leases provided that Riss was responsible for the payment of all license fees and taxes.

When the approximately 500 tractors were delivered in 1954, they were licensed in the states of Oklahoma, Missouri, Kentucky, New Jersey and New York. In the first part of 1955, the Kentucky licenses were eliminated and the vehicles were licensed in the States of Oklahoma, Missouri, New Jersey and New York. In the last part of 1955, the New York licenses were transferred to the State of Pennsylvania and the vehicles were licensed in the states of Oklahoma, Missouri, New Jersey and Pennsylvania. In 1956, the Pennsylvania licenses were transferred to the State of Delaware and the vehicles were licensed in the states of Oklahoma, Missouri, New Jersey and Delaware.

Although Riss was a Colorado corporation and TM&E was an Illinois corporation, no vehicles were licensed in either the State of Colorado or the State of Illinois. Likewise, no vehicles were licensed in any of the other 22 states or the District of Columbia in which Riss operated.

During the years 1954 and 1955, Riss' operation with the above fleet of company owned equipment was such that there were approximately 35,000 vehicle movements on the highways of the State of Missouri. The Missouri Supreme Court found that approximately one-half of these movements were made by vehicles not licensed in the State of Missouri. The Missouri Supreme Court found that appellants were not entitled to reciprocity for the vehicles licensed as set out above and that, therefore, approximately one-half of the 35,000 vehicle movements on the highways of the State of Missouri were in violation of the laws of the State of Missouri.

THE ISSUES ATTEMPTED TO BE RAISED BY APPELLANTS DO NOT PRESENT SUBSTANTIAL FEDERAL QUESTIONS.

I.

The Missouri Motor Vehicle Registration Laws Do Not Constitute an Unreasonable Burden on Interstate Commerce.

Appellants contend that the Missouri vehicle registration laws, as interpreted in this case by the Missouri Supreme Court, place an unreasonable burden on interstate commerce. They admit that this Court has previously ruled to the contrary and ask this Court to change its position. From a reading of appellants' contentions it would appear that this involves only the single ruling of this Court in **Aero Mayflower Transit Co. v. Georgia Public Service Commission**, 295 U.S. 285, 79 L. Ed. 1439, 55 S. Ct. 709. However, as is pointed out hereinafter, the appellants in fact ask this Court to overrule a long line of decisions which have universally upheld the constitutionality of comparable state motor vehicle registration statutes. In no case considered by this Court has a properly applied motor vehicle registration statute been found to be an unreasonable burden on interstate commerce.

Appellants seem to put great weight on their contention that the past cases decided by this Court involved fees of only nominal amount, while the fees here in question are substantial. However, it should be noted that many of the cases involved a tax which was repeated with each trip (such as ton-mile taxes or trip permits), which would result in taxation greatly exceeding $1,000.00 per

year if the vehicle were used so as to fully avail itself of the privilege of using the highways.

Section 301.020, RSMo, 1949, requires that the owner of every vehicle which operates on the highways of Missouri must register such vehicle and pay a tax thereon "except as herein otherwise expressly provided." The part of the statute above quoted refers to **Section** 301.270, RSMo, 1949, which grants reciprocity to certain nonresident owners. This is the only provision authorizing a legal operation of a motor vehicle on the highways of Missouri without first being registered with the State of Missouri.

Section 301.270, RSMo, 1949, was amended in 1957, but such amendment is not applicable to the case at bar. This statute authorizes a nonresident owner to operate or permit the operation of his vehicle on the highways of Missouri without first having registered the same in Missouri **if such vehicle is licensed in the place of residence of such owner.** This privilege is granted to the nonresident owner only to the extent that the place of such nonresident owner's residence grants like exemptions for residents of Missouri to operate their vehicles without registering the same. Thus, appellants could legally operate their motor vehicles in the State of Missouri only when such vehicles were registered in the State of Missouri or when they were registered in the state of residence of the owner. The Supreme Court of Missouri found that appellants did not register any vehicles in the state of their residence and, consequently, that they were not entitled to reciprocity under said **Section** 301.270, and that, therefore, all vehicles operated by appellants in the State of Missouri which did not bear Missouri licenses were illegally operated on Missouri highways. It is this situation which appellants now claim places an unreasonable burden on interstate com-

merce. However, it is submitted, as is shown hereinafter, that such is not the case; that the statutes of Missouri are in complete compliance with the repeated decisions of this Court and, further, that appellants have not introduced evidence upon which any determination of the reasonableness of Missouri license fees can be made.

The Missouri motor vehicle registration tax is imposed upon every owner whose motor vehicle is operated or driven upon the highways of this state (with exceptions provided in the reciprocity statute) and the fees for property carrying vehicles, such as are involved here, are graduated according to the gross weight of the vehicle and load carried. See **Section** 301.020, RSMo, 1949, and **Section** 301.060, RSMo, 1957 Supplement. By **Article IV, Section** 30 of the **Missouri Constitution** of 1945, all such fees, after the payment of the costs of collection, go to the maintenance of the Highway Department, the Highway Patrol, and to the road fund for the maintenance and construction of highways. The evidence is that there is no diversion of these funds, but that they, in fact, do go as directed by the Constitution.

This tax is levied upon the owners of all vehicles that operate on the highways of the State of Missouri. No distinction is made between those operated in interstate commerce and those operated in intrastate commerce; both are treated exactly alike. In such circumstances the Supreme Court of the United States has repeatedly held that such tax upon the privilege of using the highways, and to pay the costs of the construction and maintenance of highways and the policing and regulation of traffic thereon in the interest of safety, are within the powers of the state and do not constitute an unreasonable burden upon interstate commerce in violation of the commerce clause of the United States Constitution.

The first case on this subject decided by the Supreme Court of the United States was **Hendrick v. Maryland,** 235 U.S. 610, 59 L. Ed. 385, 35 S. Ct. 140, decided in 1914, and growing out of an incident occurring in 1910. In this case defendant claimed that the registration tax which was graduated according to the horse power of the vehicle was unconstitutional as placing an unreasonable burden upon interstate commerce just as do the appellants in the case at bar. The Supreme Court in denying this contention pointed out that the tax was one on the privilege of using the highways of Maryland, that is, of using the special facilities provided by the state and that such tax, as compensation for the use of such state facilities, did not burden interstate commerce. The Court said, l.c. 59 L. Ed. 391, 235 U.S. 623-624:

> "In view of the many decisions of this court there can be no serious doubt that where a state at its own expense furnished special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor. The amount of the charges and the method of collection are primarily for determination by the state itself; and so long as they are reasonable and are fixed according to some uniform, fair, and practical standard, they constitute no burden on interstate commerce. Parkersburg & O. River Transp. Co. v. Parkersburg, 107 U.S. 691, 699, 27 L. Ed. 584, 587, 2 S. Ct. Rep. 732; Huse v. Glover, 119 U.S. 543, 548, 549, 30 L. Ed. 487, 490, 7 S. Ct. Rep. 313; Monongahela Nav. Co. v. United States, 148 U.S. 312, 329, 330, 37 L. Ed. 463, 469, 13 S. Ct. Rep. 622; Minnesota Rate Cases (Simpson v. Shepard), 230 U.S. 352, 405, 57 L. Ed. 1511, 48 L.R.A. (N.S.) 1151, 33 S. Ct. Rep. 729, and authorities cited. The action of the state must be treated as correct unless the contrary is made to appear. * * *"

In the later case of **Clark v. Poor,** 274 U.S. 554, 71 L. Ed. 1199, 47 S. Ct. 702, the Supreme Court in considering the

same problem and speaking through Mr. Justice Brandeis, said l.c. 71 L. Ed. 1200, 274 U.S. 556-557:

> "The plaintiffs claim that, as applied to them, the act violates the commerce clause of the Federal Constitution. They insist that, as they are engaged exclusively in interstate commerce, they are not subject to regulation by the state; that it is without power to require that before using its highways they apply for and obtain a certificate; and that it is also without power to impose, in addition to the annual license fee demanded of all persons using automobiles on the highways, a tax upon them, under Sec. 614-94, for the maintenance and repair of the highways and for the administration and enforcement of the laws governing the use of the same. The contrary is settled. The highways are public property. Users of them, although engaged exclusively in interstate commerce, are subject to regulation by the state to insure safety and convenience and the conservation of the highways. Morris v. Duby, No. 372, decided April 18, 1927 [274 U.S. 135, ante, 966, 47 S. Ct. Rep. 548]. Users of them, although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire, who make the highways their place of business, may properly be charged an extra tax for such use. Hendrick v. Maryland, 235 U.S. 610, 59 L. Ed. 385, 35 S. Ct. Rep. 140; Kane v. New Jersey, 242 U.S. 160, 61 L. Ed. 222, 37 S. Ct. Rep. 30; Hess v. Pawloski, No. 263, decided May 16, 1927 [274 U.S. 352, ante, 1091, 47 S. Ct. Rep. 632]. Compare Packard v. Banton, 264 U.S. 140, 144, 68 L. Ed. 596, 607, 44 S. Ct. Rep. 257."

The Supreme Court of the United States has repeatedly considered this question and has uniformly held that the state may properly levy a non-discriminatory tax upon interstate carriers to compensate the state for the cost of constructing, maintaining and policing the highways which are used in such commerce. This is especially so when

applied to those engaged in the business of carriers who make the highways their place of business. In this connection see **Kane v. New Jersey,** 242 U.S. 160, 61 L. Ed. 222, 37 S. Ct. 30; **Hicklin v. Coney,** 290 U.S. 169, 78 L. Ed. 247, 54 S. Ct. 142; **Continental Baking Co. v. Woodring,** 286 U.S. 352, 76 L. Ed. 1155, 52 S. Ct. 595; **Dixie-Ohio Express Co. v. State Revenue Commission of Georgia,** 306 U.S. 72, 83 L. Ed. 495, 59 S. Ct. 435; **Aero Mayflower Transit Co. v. Board of Railroad Commissioners of Montana,** 332 U.S. 497, 92 L. Ed. 99, 68 S. Ct. 167 and **Aero Mayflower Transit Co. v. Georgia Public Service Commission,** 295 U.S. 285, 79 L. Ed. 1439, 55 S. Ct. 709.

The Supreme Court holds that where the tax is specifically levied for the privilege of using the highways there can be no question as to its constitutionality and that where the tax is levied without specific reference to the use of the highways, such tax is likewise clearly constitutional where the funds derived therefrom are, in fact, used for the construction, maintenance and policing of the highways of the state. The tax levied by Missouri, and in issue herein, clearly falls within both of these requirements. See **Clark v. Poor,** 274 U.S. 554, 71 L. Ed. 1199, 47 S. Ct. 702; **Dixie-Ohio Express Co. v. State Revenue Commission of Georgia,** 306 U.S. 72, 83 L. Ed. 495, 59 S. Ct. 435 and **Aero Mayflower Transit Co. v. Board of Railroad Commissioners of Montana,** 332 U.S. 497, 92 L. Ed. 99, 68 S. Ct. 167. The state legislature, in determining the basis upon which it will levy its tax, has a wide discretion in the use of classifications in levying such tax and in determining what form of tax it will use, and unless its determination and classification is clearly unreasonable and bears no relation to the use of the highways, such tax is not held to violate the commerce clause of the Constitution. See **Aero Mayflower Transit Co. v. Georgia Public Service Commission,** 295 U.S. 285, 79 L. Ed. 1439, 55 S. Ct. 709.

The Supreme Court has held that registration fees graduated or classified by the carrying capacity of the vehicle or by the weight of the vehicle, or by the weight and load of the vehicle or such a tax on a flat fee basis are constitutional and do not contravene the commerce clause of the United States Constitution. Thus, in **Hicklin v. Coney,** 290 U.S. 169, 78 L. Ed. 247, 54 S. Ct. 142, the court said, l.c. 78 L. Ed. 250, 290 U.S. 173:

> "* * * Carrying capacity, the size and weight of trucks, unquestionably have a direct relation to the wear and hazards of the highways. It is for this reason that the authority of the State to impose directly reasonable limitations on the weight and size of vehicles, although applicable to interstate carriers, has been sustained. Morris v. Duby, 274 U.S. 135, 143, 71 L. Ed. 966, 971, 47 S. Ct. 548; Sproles v. Binford, 286 U.S. 374, 388, 389, 76 L. Ed. 1167, 1178, 1179, 52 S. Ct. 581. As the State may establish such regulations directly, the State may adjust its license fees, otherwise valid as being reasonable and exacted as compensation for the use of the highways, according to carrying capacity, in furtherance of the same purpose. Clark v. Poor, 274 U.S. 554, 71 L. Ed. 1199, 47 S. Ct. 702, supra."

Further, see **Morf v. Bingman,** 298 U.S. 407, 80 L. Ed. 1245, 56 S. Ct. 756, wherein the court said, l.c. 80 L. Ed. 1249, 298 U.S. 412:

> "As the tax is not on the use of the highways but on the privilege of using them, without specific limitation as to mileage, the levy of a flat fee not shown to be unreasonable in amount, rather than of a fee based on mileage, is not a forbidden burden on interstate commerce. * * *"

See also, **Acro Mayflower Transit Co. v. Georgia Public Service Commission,** 295 U.S. 285, 79 L. Ed. 1439, 55 S. Ct. 709; **Brashear Freight Lines v. Public Service Commission**

of Missouri, 23 F. Supp. 865, and **Brashear Freight Lines v. Hughes,** 26 F. Supp. 908.

As is shown above, such vehicle registration taxes are imposed for the privilege of using the highways. Such privilege is unlimited and the licensee may use the highways as much as he desires, or as little as he sees fit. The amount of use is strictly up to the licensee and no limit is imposed by the state. In this connection the Supreme Court, speaking through Mr. Justice Cordozo in **Aero Mayflower Transit Co. v. Georgia Public Service Commission,** 295 U.S. 285, 79 L. Ed. 1439, 55 S. Ct. 709, said l.c. 79 L. Ed. 1443, 295 U.S. 289:

> "* * * The fee is for the privilege for a use as extensive as the carrier wills that it shall be. There is nothing unreasonable or oppressive in a burden so imposed. Cf. Clark v. Poor, 274 U.S. 554, 71 L. Ed. 1199, 47 S. Ct. 702, and Hicklin v. Coney, 290 U.S. 169, 78 L. Ed. 247, 54 S. Ct. 142, supra. **One who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he may.**" (Emphasis ours).

To the same effect see **Dixie-Ohio Express Co. v. State Revenue Commission of Georgia,** 306 U.S. 72, 83 L. Ed. 495, 59 S. Ct. 435, and **Brashear Freight Lines v. Public Service Commission of Missouri,** 23 F. Supp. 865.

In the case at bar appellants, admittedly, do both intrastate and interstate business. As is pointed out in **Bode v. Barrett,** 344 U.S. 583, 97 L. Ed. 567, 73 S. Ct. 468, the state can without question impose such license fees as it may see fit on one doing intrastate business, and since it does not appear that the operation in interstate commerce increased the charges imposed upon appellants, it is not necessary to consider whether or not such taxes conflict with the commerce clause. Thus, it is submitted that under the facts in

the present case appellants have no standing to raise such constitutional question.

If, in spite of the ruling in **Bode v. Barrett**, supra, we are to consider the reasonableness of the charge imposed by the Missouri motor vehicle registration tax on appellants for the privilege of using Missouri highways and to compensate Missouri for the cost of construction, maintenance and policing such highways, the burden of proof to prove such charges to be unreasonable rests upon appellants. This was clearly held by the Supreme Court in **Interstate Busses Corp. v. Blodgett**, 276 U.S. 245, 72 L. Ed. 551, 48 S. Ct. 230; where the court, speaking through Mr. Chief Justice Stone said, l.c. 72 L. Ed. 555, 276 U.S. 251-252:

> "That appellant is already contributing to highway maintenance is not in itself significant, for the state does not exceed its constitutional power by imposing more than one form of tax as a charge for the use of its highways in interstate commerce. It is for appellant to show that the aggregate charge bears no reasonable relation to the privilege granted."

See, also, **Capital Greyhound Lines v. Brice**, 339 U.S. 542, 94 L. Ed. 1053, 70 S. Ct. 806; **Bode v. Barrett**, 344 U.S. 583, 97 L. Ed. 567, 73 S. Ct. 468, and **Brashear Freight Lines v. Public Service Commission of Missouri**, 23 F. Supp. 865.

In connection with this burden of proof it should be remembered, as pointed out above, that the privilege of using the highways for which the tax is imposed is an unlimited privilege which the taxpayer may use as much or as little as he sees fit and consequently, and, unless and until appellants show that they have fully availed themselves of such privilege, cost figures based upon actual use of the highways are absolutely worthless and have no probative value on the question of the reasonableness of the charge imposed for the privilege. Thus, in **Dixie-**

Ohio Express Co. v. State Revenue Commission of Georgia, 306 U.S. 72, 83 L. Ed. 495, 59 S. Ct. 435, the Supreme Court said on this point, l.c. 83 L. Ed. 500, 306 U.S. 78:

> "Appellant's failure to disclose whether it fully availed itself of the privilege to use the roads leaves the figures reflecting actual use without foundation and worthless as a measure or indication of the value of that privilege. • • •"

Appellants have gone to great lengths to attempt to show the cost per mile to them for their actual use of the highways. As has just been pointed out, these figures have no probative value since their payment is for the privilege of using the highways and they may use them as much or as little as they see fit, and the evidence shows that some vehicles licensed in Missouri made only one or two trips over the highways of the State of Missouri during the year in question; whereas, others made almost daily trips. The same disparity in the use of Missouri highways applies equally to vehicles licensed in other states, some of which did not enter the State of Missouri at all during a year in question, others of which entered only once or a few times, and still others of which made almost daily trips over the highways of the State of Missouri. Thus, since appellants have seen fit to vary the use of the privilege by their various vehicles on the basis of business expediency, they cannot limit the permissible charge for such privilege to such actual use.

Appellants have introduced in evidence figures as to cost of construction and maintenance only as to a very small portion of the entire Missouri highway system. However, as is pointed out in **Brashear Freight Lines v. Hughes,** 26 F. Supp. 908, a state highway system must be considered as a whole. It cannot be segregated into parts, neither on the basis of use, nor on the basis of income from the use of the

system. Consequently, the figures used by appellants in the computations contained in their brief, which represent only a part of the Missouri highway system have no logical bearing on the reasonableness of the charge for the privilege of using such highways since these figures are based on only a very small part of the entire system.

Furthermore, appellants have not introduced into evidence and have not included in their calculations the cost of policing the highways which is a proper and necessary factor to be considered in determining the reasonableness of the charge for the privilege of using the highways, as has been pointed out above.

Likewise, appellants have not even introduced evidence as to the cost of construction and maintenance of all of the highways over which they have authority to operate, as shown by Exhibits 4 and 665. Examination of Exhibit 4 shows that Riss has I. C. C. authority to operate on many miles of highway for which they introduced no cost figures. They did not introduce cost figures for the following highways over which they have authorized routes: U. S. 65 from Sedalia to the junction of Highway 40 (M.C. 200 sheet 3); U. S. 54 from Kingdom City to the Mississippi River Bridge at Louisiana (M.C. 200 sheet 3); U. S. 69 and Missouri 6 from Cameron to the junction of Missouri 6 and U. S. 24 near Hannibal (M.C. 200 sheet 73); Missouri 7 between U. S. 24 and U. S. 40 (M.C. 200 sub. 11); U. S. 67 from St. Louis to the Mississippi River at the Alton Bridge (M.C. 200 sub. 30 sheet 2); U. S. 71 and U. S. 275 from St. Joseph to the Iowa line (M.C. 200 sub. 46, p. 3); By-pass of U. S. 40 and Alternate U. S. 40 from Wentzville to St. Louis (M.C. 200 sub. 46, p. 2, Jan. 5, 1954), and Newton County U and Missouri 43 from the Oklahoma line to Joplin (M.C. 200 sub. 106). In addition to these, Riss has various irregular route authority whereby they may and do use vari-

ous other highways of the State of Missouri. In this connection the record of driver arrests introduced in evidence shows arrests in such places as Cape Girardeau County, which is far from any regular route authorization of appellants.

Thus, it appears that even if it were assumed for the purposes of argument that Riss could properly consider only the costs of construction, maintenance and policing of the highways over which they operate in the State of Missouri rather than the cost of the whole highway system, it appears that appellants have failed and refused to submit evidence as to the cost of construction, maintenance and policing of all of the highways over which they, in fact, operate and thus the comparison even on the basis that appellants claim is not substantiated.

It is, therefore, submitted that this Court has uniformly upheld the constitutionality of state motor vehicle registration statutes such as those involved in the case at bar, and that appellants have shown no reason why such matter should be reconsidered at this time. Further, it appears that appellants have not adduced the evidence necessary for a determination of the reasonableness of the motor vehicle registration fees charged by the State of Missouri, and that, therefore, even if this Court were inclined to reexamine the question, no intelligent determination of the issue could be made. It is, therefore, urged that this issue as attempted to be raised by appellants, presents no substantial federal question for the determination of this Court.

II.

The Missouri Motor Vehicle Registration Statutes Do Not Deny to Appellants the Equal Protection of the Laws by Reason of Imposing a Greater Charge upon Those Engaged in Interstate Commerce Than Is Imposed upon Those Engaged in Intrastate Commerce.

In Point II of their jurisdictional statement, appellants contend that the Missouri motor vehicle registration laws deny equal protection to appellants because, being engaged in interstate commerce, they are charged more for the privilege of using the highways of the State of Missouri than would be a similar carrier operating solely in intrastate commerce. The basis of this contention appears to be that from the nature of things when one is engaged in interstate commerce his vehicle will be in Missouri only a part of the time; whereas, when one is engaged in intrastate commerce his vehicles will be in the State of Missouri all of the time and that, therefore, the intrastate vehicle will be able to operate more miles or more trips than will the interstate vehicle for the same fee. Thus, discrimination is claimed against interstate commerce. However, this ignores the facts of the situation. The evidence here shows that some of appellants' vehicles operate almost exclusively in the State of Missouri, whereas, others operated only occasionally within Missouri. Those vehicles which operated exclusively in the State of Missouri would use the Missouri highways as much as if not more than a comparable intrastate carrier. The difference in the use of the Missouri highways by the various vehicles of appellants demonstrates, graphically, the validity of the point made by Mr. Justice Cordozo in **Aero Mayflower Transit Co. v. Georgia Public Service Commission**, 295 U.S. 285, 79 L. Ed. 1439, 55 S. Ct. 709, that the carrier is free to use his vehicle as much or as little as he desires and that the reason-

ableness of the fee charged cannot be measured by actual use.

If appellants' argument were to be extended to its logical conclusion it would result in a claim that the Missouri motor vehicle registration fees are reasonable for those of its vehicles which are used extensively on the highways of Missouri and are unreasonable for those of its vehicles which use the Missouri highways only infrequently. This points up the real basis of appellants' argument which is that any flat fee is a violation of the equal protection clause of the Fourteenth Amendment, and that a state can, constitutionally, only charge a motor vehicle registration fee which is directly related to actual use of the highway or can only charge a nominal fee.

Appellants' argument seems to be based on a contention that they are required to license all of their vehicles in Missouri whether they operate in Missouri or not. This, of course, is not the case. Appellants are required to have Missouri licenses for only those vehicles which they operate in Missouri and appellants are free to determine for themselves what vehicles, and how many vehicles, will be operated in the State of Missouri.

Appellants contend that they are faced with demands from other states, but the evidence in the case does not support this contention. Appellants did present some testimony that the State of Oklahoma demanded that they license twenty vehicles in Oklahoma. However, there was no contention or showing that this was based upon any provision of Oklahoma law or that the so-called demand resulted from anything other than the individual ideas of some un-named official of the State of Oklahoma. There was no evidence of any demand for vehicle registrations by the states of New York, New Jersey, Pennsylvania,

Kentucky or Delaware that appellants license vehicles in their states, yet the evidence shows that the vehicles were, in fact, licensed in these states; also, the evidence does not show that the other states in which appellants operate demanded any licenses and if such demands were made apparently appellants successfully resisted them for they did not license any of their vehicles in such other states. The evidence shows that appellants did not, in fact, operate any of their vehicles with more than one license on such vehicle at any one time. In fact, appellants did not engage in the practice known as "double plating", i. e., operate a vehicle which has been registered in and bears the license of more than one state.

Appellants claim that the Missouri motor vehicle registration tax discriminates against interstate commerce and denies them the equal protection of the law for the reason that in the nature of things (they contend) that one engaged in intrastate commerce will use his vehicle on the Missouri highways more than one engaged in interstate commerce, and yet both must pay the same fee. They thus contend that they pay more for the use of the highways than one engaged strictly in intrastate commerce. This argument, of course, overlooks the fact as pointed out above, that the privilege of using the highways is unlimited as to each and the Supreme Court of the United States has repeatedly held that where the tax is imposed without discrimination or difference on both intrastate and interstate commerce that no unconstitutional discrimination results merely from the fact that one may use the privilege more than the other. This, the court holds, is strictly a matter which is up to the taxpayer. Difference in use is not imposed by the state and no complaint can validly be made thereof. The state clearly has a right to regulate and tax the privilege of using its highways by

both residents and nonresidents. See **Hendrick v. Maryland**, 235 U.S. 610, 59, L. Ed. 385, 35 S. Ct. 140. In **Kane v. New Jersey**, 242 U.S. 160, 61 L. Ed. 222, 37 S. Ct. 30, the Supreme Court, speaking through Mr. Justice Brandeis, stated, l.c. 61 L. Ed. 227, 242 U.S. 167:

> "The power of a state to regulate the use of motor vehicles on its highways has been recently considered by this court and broadly sustained. It extends to nonresidents as well as to residents. It includes the right to exact reasonable compensation for special facilities afforded as well as reasonable provisions to insure safety. * * *"

See also **Brashear Freight Lines v. Public Service Commission of Missouri**, 23 F. Supp. 865.

In support of their contention of a denial of equal protection appellants make the argument that under the laws of Missouri they must buy more than one license plate for the same vehicle during the same year, because they are required to return the license plate to the State of Missouri any time one of their vehicles is outside the State of Missouri for more than ninety days at a time. Although appellants do not cite the statute they are apparently referring to the provisions of **Section** 301.120, RSMo, 1957 Supplement. This contention was presented to the Supreme Court of Missouri, which court determined that it was not an actual issue in the case. Appellants have never taken any action in compliance with their claimed construction of this statute and, of course, cannot now claim that they have been injured thereby. As a matter of fact, this issue is set up as a straw issue for the sole purpose of claiming injury where none has, in fact, occurred. Likewise, this contention is based upon a strained and erroneous construction of this statute. This statute has never been construed by the courts of the State of Missouri, and the

Supreme Court of Missouri did not find it necessary to construe this statute in the present case. It is submitted that, in fact, this statute merely provides for the returning of license plates when the owner thereof no longer has any legal use therefor. In any event, it cannot validly be contended that the statute results in higher taxes on interstate commerce. This especially in view of the fact that it has never been applied to appellants and appellants have never taken any action thereunder.

It is, therefore, submitted that under the decisions of this Court appellants are not denied the equal protection of the laws as contended in Point No. II of the appellants' jurisdictional statement.

III.

The Missouri Motor Vehicle Registration Statutes Do Not Deprive Appellants of Equal Protection of the Laws by Refusing to Grant Reciprocity to Appellants.

The arguments contained in Point No. III of their jurisdictional statement apply only to the appellant Riss, and have no applicability whatsoever to the appellant TM&E. However, the evidence showed that in some instances the licenses for the vehicles operated by Riss were procured by TM&E and in other instances they were procured by Riss.

The Missouri motor vehicle registration statutes are imposed upon all who use Missouri highways. Those who are engaged in interstate commerce and those who are engaged in intrastate commerce are treated exactly alike. All vehicles using Missouri highways must be registered under the Missouri motor vehicle registration statutes, unless they are entitled to reciprocity under the provisions of **Section** 301.270, RSMo, 1949. Such reciprocal provisions

allow a nonresident owner to operate his vehicles on Missouri highways without registering the same in Missouri. In order to qualify for reciprocity the vehicle must be registered in the state of the owner's residence. Appellants refused to license any of their vehicles in the state of their residence. Riss is a Colorado corporation and, therefore, a resident of Colorado, but no vehicles were licensed in Colorado; TM&E is an Illinois corporation and, therefore, a resident of Illinois, but no vehicles were licensed in Illinois. No such Illinois licenses were used because the cost was too high.

Appellants ignore TM&E home residence in Illinois and their failure to use Illinois licenses. They base their argument only upon the situation as it applies to Riss. In the first place, Riss did not use any Colorado licenses and, therefore, is in no position to complain that they were improperly denied reciprocity. It is axiomatic that one cannot contend for unconstitutional discrimination and a denial of equal protection thereby on a hypothetical fact situation, *i. e.*, on a fact situation which does not coincide with the circumstances of the one complaining.

The basis of appellants' contention in this connection is that there is no reciprocity between the states of Missouri and Colorado because Colorado imposes a ton-mile tax and will not grant reciprocity as to such tax. As a result thereof, under the Missouri statutes, Missouri does not and cannot grant reciprocity to the residents of Colorado. On this basis Riss contends that it is discriminated against because of the accident of its having been incorporated under the laws of the State of Colorado. It should be here understood that reciprocity is granted on the basis of the two states in question treating each other's residents in the same manner. Thus, if Missouri's residents are not charged in Colorado, Colorado's residents are not charged in Mis-

souri. On the other hand, if Colorado charges Missouri residents, Missouri charges Colorado residents. However, Riss' argument seems to be that Missourians have to pay when they use their vehicles in my home state of Colorado, but it is unconstitutional and a violation of equal protection for Missouri to require me to pay when I go to Missouri. This, of course, ignores the entire theory upon which reciprocity statutes are based

There was no requirement that Riss be incorporated under the laws of the State of Colorado. This was strictly a matter of choice for those who incorporated Riss, and Riss cannot now claim privileges which it would have had if it had been incorporated in some other state, when in fact it is a Colorado corporation. The Missouri reciprocity statute classifies the owners of motor vehicles on the basis of their residence. Residents of a reciprocating state may operate their vehicles in Missouri without Missouri registration. This for the reason that such reciprocating state allows Missourians to operate their vehicles in that other state without registration in such other state. It is submitted that such is a valid classification and such classification has, in fact, been approved by this Court. The decisions of this Court make it clear that the granting of an exemption from a tax by such reciprocity provisions does not, in fact, constitute a discrimination, and does not deny to those who cannot bring themselves within the exemption the equal protection of the laws. It makes no difference whether the motor vehicle registration statutes have reciprocity provisions or require everyone to register and pay the tax and grant no reciprocity, there is no discrimination or denial of equal protection. This has been clearly and explicitly decided by this Court in such cases as **Kane v. New Jersey,** 242 U.S. 160, 61 L. Ed. 222, 37 S. Ct. 30; **Storaasli v. Minnesota,** 238 U.S. 57, 75 L. Ed. 839, 51 S. Ct.

354, and **Bode v. Barrett,** 344 U.S. 583, 97 L. Ed. 567, 73 S. Ct. 468.

As a matter of fact, appellants could have so conducted their business as to be entitled to reciprocity for the operation of their vehicles in Missouri. The State of Missouri has reciprocity with the State of Illinois; TM&E is an Illinois corporation and, therefore, a resident of Illinois. As has heretofore been pointed out, under the method of operation adopted by appellants, some of the vehicles were licensed in the name of TM&E and some in the name of Riss. If TM&E had secured licenses for these vehicles in the State of Illinois it would have been entitled, by reason of reciprocity, to operate or permit the operation of these vehicles in Missouri without registering the same under the Missouri registration statutes. However, appellants refused to take this course of action because Illinois licenses cost too much. Instead appellants chose to license their vehicles in states with low registration fees and in accordance with their own ideas of their economic advantage. In other words, appellants picked the states in which they would license their vehicles for reasons of their own, without regard to the laws of the State of Missouri, and now complain because they are not granted reciprocity for such vehicles so licensed.

It is, therefore, submitted that since appellants do not qualify under Missouri statutes for the exemption to the Missouri motor vehicle registration tax provided by the Missouri reciprocity statute, that they cannot complain on constitutional basis. Appellants have not licensed any of their vehicles in the state of their residences and, therefore, they cannot qualify for this exemption. Since they have not so licensed their vehicles they cannot complain as to what the situation might be if they had, in fact, licensed their vehicles in the state of their residence. Further,

as has been specifically held in the cases above cited, such reciprocity exemptions do not constitute a violation of equal protection.

Even if Riss were in a position to complain about the lack of reciprocity between Missouri and Colorado, it is submitted that such lack of reciprocity, which is based upon the refusal of the State of Colorado to grant like reciprocal provisions to residents of the State of Missouri, is in nowise a violation of equal protection. Furthermore, the fact that residents of other states may be entitled to reciprocity does not amount to a denial of equal protection to Riss who is a resident of Colorado.

CONCLUSION.

It is, therefore, on the basis of the foregoing, respectfully submitted that the questions attempted to be raised by appellants in the case at bar do not present substantial federal issues, and that this Court should not take jurisdiction in this cause.

Respectfully submitted,

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